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File No. S. Bj 2/45

Examiner

Legal DEPARTMENT

BRANCH

Subject:— Suits. Bijapur.

C.S.No. 166 of 1944.

Udaoirao Venkatrao Jahagirdar

Plaintiff

Vs.

① The Provincial Government of Bombay

② The Dharwar Urban Co-operative Credit Bank Ltd

Claim Rs 5.

Re: ~~Endorsement~~ by the ~~Commissioner~~, Southern Division, No. LSR 323, dated 22/9.44 ~~Forwarding~~ ~~etc~~ ~~with~~ ~~enc~~

Civil Appeal No. 87 of 1947

Second Appeal NO. 1258 of 1948.

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Please see letter from the Commr. S.D. placed below. An award was made under the Co-operative Societies Act in 1927. In 1940 its execution under section 59(1)(a) was held time-barred by the Civil Court presumably under section 48 of the C.P.C. The Society obtained a fresh certificate from the Registrar and attempted to execute the award through the Collector under section 59(1)(b). Thereupon the debtor gave a notice of suit under section 80 C.P.C. on the ground that the proceedings before the Collector were no longer competent. The Commr requests the F.I.A. to state whether those proceedings may be continued and whether the threatened suit could be defended.

2. The Commr. has forwarded a judgment recently pronounced by the District Judge, Belgaum, in another suit. In that case the award was made in 1920, that is before the present Societies Act came into force on 4.12.1925. Before the Act an award could be executed only through the Civil Courts; but the Act provided an alternative remedy of execution through the Collector. The Civil Courts have always applied the law of limitation to execution proceedings before them. In this case the District Judge, Belgaum found that the execution of the award of 1920 was time-barred before 4.12.25. He held that the new Act could not revive the award and make the alternative remedy available for it. That was no doubt a correct decision, but the learned Judge also based it on the further and larger ground that "The award which was carried upto judgment under one remedy and ~~because~~ became ineffective could not afterwards be enforced under the other remedy; that is to say after exhausting the remedy under section 59(1)(a) the benefit of the remedy under section 59(1)(b) could not be availed of". This is a far-reaching conclusion and, it is submitted, is not supported by the authorities relied upon by the learned Judge.

3. It would be useful to give a brief consideration of section 59 before the said authorities are discussed

4. Section 59 states that an award may be executed (a) by any Civil Court in the same manner as a decree of such Court, or (b) according to the law and under the rules for the time being in force for the recovery of arrears of land revenue etc. It is clear from this that the Society's right is founded upon the award and that there are two alternative remedies provided for execution. A Society may follow both, though not probably simultaneously, and each remedy will be controlled by its own law. The Civil Courts have thus applied their law of limitation. It was also held in Maratha Co-operative Bank v. Keshav 40 Bom. L.R. 889 that a proceeding before the Collector will not avail as a step-in-aid to save limitation in the Civil Courts. Vice versa, since the two remedies are independent of each other, a proceeding before the Collector should not be barred because the remedy in the Civil Courts is not available.

5. The questions whether 'and' may be read for 'or' and whether any importance attaches to the absence of the words "or by both" which occur in O. 21, r. 30 C.P.C. do not arise on account of the admitted position that a Society which adopts one of the remedies at first is not thereby debarred from pursuing the other afterwards. The point made by the District Judge however is that if the Civil Court remedy is exhausted, the other remedy also ceases to be available.

6. The first authority referred to by the District Judge is Halsbury's Laws of England, Vol. 13, page 415. It deals with "cause of action merged in judgment" and the following passage is referred to by the learned Judge: "A plaintiff who has once sued a defendant to judgment,

cannot, while the judgment stands, although unsatisfied, sue him again for the same cause, because the cause of action is merged in the judgment, which creates an ~~objection~~ obligation of a higher nature." The principle enunciated in this passage, as pointed out in the same book, arises out of res judicata. Probably that principle is beside the point here. Judgment in English law is equivalent to decree and in the case before us would correspond to the award. It is not disputed that the Society's cause of action ~~did not~~ merged in the award.

7. ed Australia v. arclays ank 1941 A.C. 1, on which the District Judge next relies, explains the limitations of the above rule, but since it also deals with alternative remedies, is more useful to our immediate purpose. The head note is short and clear and may be set out here - "The appellants by merely initiating proceedings against the Company for money lent or for money had and received had not thereby elected to waive the tort so as to be precluded from bringing the present action in tort. In such a case it is judgment and satisfaction in the first action, and not merely the bringing of the claim, which constitutes a bar to a second action." Thus there were two alternative remedies, the one in contract, the other in tort, and the pursuit of one, in the absence of judgment and satisfaction, was held not to constitute a bar for the other. Probably the principle supports a different conclusion from that reached by the learned District Judge.

8. nmant v. Kururao 44 Bom. L.R. 880 is the last authority mentioned by the learned Judge. This was a case not of alternative remedies, but of inconsistent rights, and hence does not apply to the case before us. The distinction is explained by the learned Chief Justice himself at page 889. In dealing with inconsistent rights His Lordship observed thus: "Having in this case issued a darkhast to recover the whole amount, he has, in my view, unequivocally elected to stand

his right under the decree to recover the whole amount in one sum, and he cannot afterwards go back on that election, and proceed to recover the amount in instalments". That there was no question of election in the Society's case has been pointed above and is not disputed by the learned District Judge himself.

9. Therefore the inquiry whether the Civil Court is still available or is exhausted would not be relevant for the purposes of a proceeding before the Collector. The decision of the District Judge was acquiesced in by the Govt. because it was correct in regard to the award of 1920 then before the Court. The decision would not apply to an award made after the Co-operative Societies Act VII of 1925 came into force.

10. The Commr. may therefore be informed that execution of the award through the agency of the Revenue Department may be continued and that the suit, if filed, can be defended.

5/4

Put up RLA's Opinion no. 5141 of 9.9.35 and no. 6620 of 28.7.41

RLA

Although the case of Hanmant v Bururao (44 Bom LR. 880) does in reference to inconsistent remedies, the C.J. has definitely expressed the view that even in cases of alternative remedies the pltff can pursue all or any of his remedies up to judgment and that it is only on obtaining judgment on one remedy that the pltff loses his right to proceed on the other remedy. The dictum laid down by the C.J. is in consonance with the English cases on the point and is now binding on the Bombay Courts. In the circumstances RLA's Opinion no. 5141 of 9.9.1935 followed in RLA's Opinion no. 6620 of 28.7.1941 no longer holds good and it is very doubtful if the present case can be successfully defended in the event of a suit being filed.

Will Mr Muralidharan please note on this.

18/4/44

It appears that one Mr.Jahagirdar had obtained a loan from the Dharwar Urban Cooperative Credit Society, and on 1-3-1927 an award was made against him under section 54 of the Bombay Cooperative Societies Act 1925 directing payment of Rs.2670-5 with future interest. On 7-9-1929 the Assistant Registrar certified the award for execution of through the Civil Court under section 59(1)(a) of that Act. The society accordingly took proceedings and recovered part of the amount. In 1933 it filed a darkhast wherein some of the mortgaged property was sold, but the sale was set aside by the Dist. Court on appeal, and in 1940, the Court dismissed the darkhast as barred by limitation. The society thereafter commenced execution proceedings through the revenue authorities under s.59(1)(b); the defaulter has applied to the revenue authorities that the award being time barred should not be executed, and has also given a notice of suit. The question raised for consideration is whether it is lawful for the revenue authorities to execute the award.

2. The answer to the question depends upon the construction of s.59(1) of the Bombay Cooperative Societies Act 1925. That sub-section provides inter alia that such awards shall be executed (a) by the civil court upon a certificate or (b) according to the law and under the rules for the time being in force for the recovery of arrears of land revenue. The enactment is couched in impersonal language and provides the procedure for the execution of the award. Prima facie it does not require a society which has obtained an award to elect once for all the forum it will approach for execution so as to be thereafter precluded from resorting to the other: for the duty laid upon the court, for instance, to execute the award upon the registrar's certificate is not expressed to be conditional upon

there having been no proceedings taken before the revenue authorities. Moreover, execution is not complete by a single proceeding but ordinarily involves repeated proceedings. Just as the decree-holder has the right, every time he choose to commence proceedings to decide which of the different modes provided by law he should adopt, s.59(1) appears to contemplate that a society should have such a choice of forum every time it is about to take proceedings. Therefore the society in this case would not be disentitled to seek execution through the revenue authorities merely because it previously took proceedings in the civil court. This view is reinforced by the principles laid down by the House of Lords in United Australia Ltd. V. Barclays Bank (1941) A.C.1.

3. The precise ground upon which the society is said to be barred of this remedy is that the civil court has held that execution is barred by limitation. It is true that ordinarily where the law permits alternative remedies for the enforcement of a right, in any case where the first remedy is prosecuted to judgment the second remedy is barred. That rests upon the principle that in that event the cause of action is merged in the judgment given, and does not subsist so as to constitute a valid foundation for a second action. The principle upon which finality is attached in law to judgments can only apply in respect of matters actually decided. In this case the only point which seems to have been decided was that the society's application for execution through the civil court was barred under s.48 of the Civil Procedure Code 1908. The question whether the right of execution by the alternative remedy was barred was not before the court and was not decided. Section 48 abovesaid does not apply proprio vigore to proceedings of the revenue authorities. A law of limitation, moreover, ordinarily has the effect merely of barring the particular remedy to which it applies, and

does not extinguish the right itself: Chitaley & Iyer's Limitation Vol.I p.121. Therefore the decision of the civil court in this case cannot per se destroy the rights of the society under the award and cannot prevent it from adopting any lawful means for enforcing them.

4. The real question therefore is whether any limitations exist with respect to the society's right to execute the award. It is pertinent to recall that under the law prior to the enactment of the Bombay Cooperative Societies Act 1925, such an award could only be enforced through the civil courts. The law did not expressly prescribe the procedure in that behalf, but the courts adopted the procedure under the general law with respect to execution of decrees, including the provisions as to limitation. This was consistent with the principle that where by a statute a matter is referred to a court without more, the legislature is presumed to deal with it as a court, and therefore the ordinary procedure and incidents of its jurisdiction with respect to matters of the same nature apply in relation thereto: see National Telephone Co. V. The Postmaster General (1913) A.C.546; Balkrishna Udayar V.Vasudeva Ayyar I.L.R. 40 Mad. 793 P.S.; Ram Singh V.Basant Das 38 Bom.L.R.479 P.C. Consequently, the right of executing such an award was subject to the same limitations as applied in the case of execution of a decree, including that stated in s.48 of the C.P.Code 1908. S.59(1) of the Act of 1925, while reenacting the provision enabling execution through the civil court, doubtless retained these limitations, and the decisions of the High Court have recognised their existence. That sub-section provides an additional remedy by way of execution through the revenue authority and the question is whether the Legislature intended thereby to remove these limitations. The enactment must be

viewed in the light of the well established principle that the Legislature does not alter the previous policy of the law except by express words or by necessary implications. The sub-section however only deals with the procedure and does not creat a new right. In so far as it departs from the pre-existing law it merely provides a summary remedy through executive process. The legislature must therefore be presumed to have intended that this additional remedy shall be available only subject to the defences which the defaulter may have had if the proceeding had been in the Civil Court. This principle was recognised by the Privy Council in Hansraj Gupta V.Official Liquidators of the Dehra Dun and Mussoorie Railway Co. L.R.60 I.A. 13 wherein it was held that the summary proceedings under s.186 of the Indian Companies Act 1913 (in respect whereof no period of limitation is prescribed) every objection is as open to the person sought to be charged as it would have been if a suit had been filed, and that consequently a time-barred debt cannot be enforced by a summary Order under that section. It follows therefore that though the provisions of the law relating to limitation are not applicable to applications to execute an award under s.59(1)(b), where the applicant has by taking proceedings in Court called those provisions into play, his right to enforce the award through the revenue authorities is necessarily subject to the defences which the defaulter could have taken in the Civil Court. If the application in this case had been made to the Civil Court, it would have been barred under s.48 of the Code. Consequently, the defaulter's plea that the present application must also be deemed to be likewise barred must prevail.

And this is whether or not there is a decision of the Court upon the plea of limitation.

RGu
28/4

R.L.A. This seems to be important enough a matter for A Bench to note on

Rmn
3/5/...

Submitted.

The facts are fully stated in para. 2 of the Endorsemen from the Commr. S.D. It seems that the darkhast proceedings (No. 172/33) instituted by the Dharwar Urban Co-operative Credit Society against Mr. Jahagirdar under sec. 59(1)(a) of the Bombay Co-operative Societies Act, 1925 were dismissed by the Sub-Judge, Bagalkot. The Society thereafter obtained a fresh certificate from the Registrar and commenced execution proceedings through the revenue authorities under ~~xx~~ sec. 59(1)(b) of the Act. The defaulter has applied to the Commr. S.D. stating that the award which was declared time-barred by the Civil Court cannot be executed by the Revenue Authorities, and has also given notice of suit under sec. 80 of the Code of Civil Proc. 1908. On these facts the Commr. S.D. seeks R.L.A's opinion whether execution of the award can be continued through the agency of the revenue authorities under sec. 59(1)(b) of the Bombay Co-operative Societies Act, 1925.

2. Sub-sec. (1) of sec. 59 of the Bombay Co-operative Societies Act, 1925, enacts that every order passed by a liquidator under sec. 50, or by the Registrar or his nominee or arbitrators on disputes referrred to him or them under sec. 50(g) or under sec. 54 or under sec. 54A(3), every order passed in appeal under sec. 56 and every order passed by the Provl. Govt. in appeal against orders passed under sec. 50, 54 or 54A(3) shall, if not carried out,

(a) on a certificate signed by the Registrar or a liquidator, be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court; or

(b) be executed according to law and under the rules for the time being in force for the recovery of arrears of land revenue, provided that any application for the recovery in such manner of any sum shall be made to the

Collr. and shall be accompanied by a certificate signed by the Registrar or by an Asstt. Registrar to whom the said power has been delegated by the Registrar.

On a previous occasion, on facts on all fours with those in the present case, R.L.A. held thus: -

"The use of the word "or" in sec.59(1) of the Bombay Co-operative Societies Act, 1925, merely shows that it is at the option of the person in whose favour the orders referred to in the section are made, to have them executed in any of the modes specified therein. The word "or" does not show that if one method is resorted to, the party having recourse to it is precluded from adopting the other. To carry out the intention of the Legislature, it is occasionally found necessary to read the conjunctions "or" and "and" one for the other. If the intention of Legislature had been that the party choosing one method should be precluded for ever from trying the other, it would have made an express provision to that effect (cf. sec. 68(2) of the Transfer of Property Act etc." (See R.L.A's No. O.Co-operative 7/30, dated 24.11.1930). This view was accepted and followed in R.L.A's opinions Nos. 5141, dated 9.9.1935 and 6620, dated 28.7.1941). The above opinions suggest that the word "or" should be read as "and". It may, however, be stated that "the words of common usage should be given their usual, ordinary and natural meaning or signification according to approved usage, unless there is some indication to the contrary in the Statue itself. The sense in which the words in question are used in every day life rather than their scientific meaning is the criterion to use in ascertaining their meaning. And it is to be presumed that the Legislature has used the words in their known and ordinary signification .... The meaning of any word, however, will always depend upon the Legislative intent, and the meaning intended by the Legislature should prevail, even though it be contrary to common usage or

*Pp.149-150 of Vol.).Co-operative/28 to 34.

@ Pp.79-80 of Vol. O.Co-operative/35-37 and p.65[illegible] of O. Co-operative/41.

to technical signification (pp. 316-31) of Crawford's Statutory Construction). "In ordinary use the word "or" is a disjunctive that marks an alternative which generally corresponds to the word "either". In face of this meaning, however, the word "or" and the word "and" are often used interchangeably" (Ibid p. 323). The word "or" in sec. 59(1) provides for an alternative remedy and it may, therefore, be taken as corresponding to the word "either". In light of the interpretation so placed on the word "or" it seems that the two opinions referred to above would hold good.

4. However, the question now raised by the R.L.A. for consideration is whether in pursuance of the ruling of the H.C. in Hanmant Bhimrao v. Gururao (44 Bom. L.R. p. 880) the above-mentioned opinions of the R.L.A. could still appear to hold good, and if so whether the threatened suit can be successfully defended.

It may be pointed out that the facts underlying the said ruling in Hanmant v. Gururao disclose that the decree-holder had two alternative and inconsistent rights, and it was held that in such a case the decree holder must elect which of the remedies he is going to rely upon and that having elected to rely upon one he is not allowed to retract his election and resort to the second one, and it is irrelevant in such a case that the action does not proceed to judgment. The question is whether the provisions of sec. 59(1) of the Bombay Co-operative Societies Act, 1925, at all contemplate applicability of the principle of "election" 'Election' at common law may be either between inconsistent rights or between alternative remedies. The difference between the two is that while in the former case any unequivocal act done with the full knowledge is final against every one, ~~while~~ in the latter case nothing short of judgment or satisfaction is final. The question of inconsistent rights does not arise in the present

case. Alternative remedies would involve the question of election between two possible causes of action whether against the same defendant or against a third party, and this view appears to find support from the following observations of Viscount Simon L.C. in United Australia Ltd. v. Barclays Ltd. (1941) A.C. p. 1 at 19 --

"No doubt, if the plaintiff proved the necessary facts, he could be required to elect on which of his alternative causes of action he would take judgment, but that has nothing to do with the unfounded contention that election arises when the writ is issued. There is nothing conclusive about the form in which the unit is issued, or about the claims made inthe statement of claim. A plff. may at any time before judgment be permitted to amend. The substance of the matter is that on certain facts he is claiming redress either in the form of compensation i.e. damages as for tort, or in the form of restitution of money to which he is entitled, but which the defendant has wrongly received. The same set of facts entitles the plff. to claim either form of redress. At some stage of the proceedings the plff. must elect which remedy he will have. There is, however, no reason of principle or convenience why that stage should be deemed to be reached until the plff. applies for judgment". Sec. 59(1) provides that every order passed by a liquidator under sec. 50, or by Registrar or his nominee or arbitrators on disputes referred to him or them under sec. 50(g) or sec.54 or under sec. 54A(3), every order passed under sec. 56, and every order passed by Provl. Govt. in appealshall be executed in the manner prescribed in clause (a) or cl. (b). It will thus be noticed that the section merely provides for the mode of enforcing the orders passed. Whatever cause of action may be would be merged into the order passed under the various sections referred to in sec. 59(1) and consequently at the stage of

execution of the order there would neither survive the question of alternative causes of action nor that of alternative remedies. Sec. 59(1) only provides for alternative remedies for execution of the order once passed. Alternative remedies by way of distress and suit are also provided in the Bombay Municipal Boroughs Act, 1925 and it has been held by the H.C. that the provisions of sec. 203 of the Bombay Municipal Boroughs Act can be resorted to in case of failure to realise by process the whole or any part of any amount recoverable under provisions of Pt. VIII (City Municipality of Bhusaval v. The Hindustan Construction Coy, 44 Bom. L.R. 890). With respect, it is submitted that the ruling in 44 Bom. L.R. 880 would be no bar to the execution proceedings initiated under sec. 59(1)(b) of the Bombay Co-operative Societies Act,1925, when proceedings under sec. 59(1)(a) are held to be time-barred by the Court.

Perusing this ruling, it does not appear that the alternative remedy of executing the order must be given to the Society.

27/5

I am inclined to agree with the view taken by P.A. (Mr. Gaitonde).

2. It appears that one Mr. Jahagirdar had taken a loan from the Dharwar Urban Cooperative Credit Society and on 1-3-1927 an award was made against him under section 54 of the Bombay Cooperative Societies Act, 1925 directing payment of Rs.2670-5-0 with future interest. On 7-9-1929 the Assistant Registrar certified the award for execution through the civil court. The society accordingly took proceedings and recovered part of the claim. In 1933 it fil a Darkhast wherein some of the mortgaged property was sold but on appeal the sale was set aside by the District Court and in 1940 the court dismissed the Darkhast as barred by

limitation. The soeicty thereafter commenced execution proceedings through the Collector under clause (b) of section 59(1). The defaulter has applied to the Commr. that the award being time barred could not be executed through the revenue authorities and has also given a notice of suit. The Commr. refers to the judgment of the D.J. Belgaum in appeal No.148 of 1941 that "the award which was carried up to judgment under one remedy and became ieffective could not afterwards be enfroced under the other remedy that is to say after exhausting the remedy under clause (a) of sec.59(1) of the Act the benefit of the remedy under clause (b) of sec.59 could not be availed of." The Commr. desires to know whether in view of the decision of the D.J., Belgaum the execution of the award in the present case should be continued and whether the suit, if filed, could be successfully defended; and the R.L.A. is requested to advise.

Section 59(1) of the Bombay Cooperative Societies Act, 1925, inter alia provides that every order passed by a liquidator under sec.50 or by the Registrar or his nominee or arbitrators on disputes referred to him or them under clause (g) of section 50 or under section 54 or under sub-section (3) of sec.54A etc. shall if not carried out,

(a) on a certificate signed by the Registrar or a liquidator, be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court; or

(b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue.

This provision was amended in 1943 with a view to make the intention of legislature more clear in respect of treating the

This amendment is not very material for purposes of this case

award as a decree of a civil court for purposes of execution under clause (a) of section 59(1). In interpreting section 59(1) in 1935 in a case where the facts were on all fours with the present case the R.L.A. observed: "The use of the word or in sec.59 of the Bombay Cooperative Societies Act, 1925, merely shows tha it is at the option of the person in whose favour the orders referred to in the case are made, to have them executed in any of the modes specified therein. The word 'or' does not show that if one method is resorted to, the party having recourse to it is precluded from adopting the other. To carry out the intention of the Legislature, it is occasionally found necessary to read the conjunction 'or' and 'and' one for the other. If the intention of the legislature had been that the party choosing one remedy should be precluded for ever from trying the other, it would have made an express provision to that effect" (see R.L.A.'s opinion No.7/30 dated 24-11-1930). That opinion has been followed in a series of later opinions given by other R.L.As. and there is no decision of the Bombay High Court which runs counter to that opinion of the R.L.A. In the Maratha Cooperative Credit Bank of Dharwar V Keshav Trimbak Hunde (40 B.L.R.889) the question raised was whether an application to enforce an award made to the Collr. under sec.59(1)(b) cannot be treated as an application made to a court for execution, and whether any proceedings taken thereunder cannot be treated as steps in-aid of execution within the meaning of Art.182(5) of the Indian Limitation Act. 1908. Rangnekar, one of the judges who heard the appeal answered the question

in the negative observing: "The section (i.e. sec.59(1) of the Bombay Cooperative Societies Act) provides two methods for carrying out the orders and awards made by arbitrators under the Act. Under sub-clause (a) an award can be executed by a civil court in the same manner as a decree of that court. The second method of execution is that provided by sub-clause (b) of section 59. The question therefore is whether proceedings taken under sec.59(1)(b) can be treated as steps-in-aid of execution within the meaning of Article 182(5), of the Indian Limitation Act. In our opinion it is difficult to hold that an application made to the Collector for the recovery of the amount of an award under this provision can be treated as an application made to a court for execution or take steps-in-aid of the execution of the decree". This decision clearly implies that there is no objection to pursuing either or both of the remedies provided in sec. 59(1) fo recovery of the amount due under an award passed under the Act. If both the remedies are pursued simultaneously the position would be as in concurrent actions where "if indeed the plaintiffs were to recover the full claim in each action a court of equity would interfere to prevent them from having a double satisfaction" (see the observations of Bombay J. in Morris v Robinson quoted in 1941 A.C.1 at p.20) In his opinion No.7 dated 24-11-1930 the R.L.A. has however stated that either of the two methods provided in sec.59(1) can be followed, implying thereby that both cannot be pursued simultaneously. That only meant a caution to avoid confusion and double satisfaction and did not intend to point out any illegality thereof. That apart, it is at any rate clear that sec.59(1) provides for two alternative remedies for execution - one through the civil court and the other

through the revenue authorities - and it is open to the party concerned to choose either for or both if need be to obtain satisfaction of his award; and once having decided to choose one of the for he is not precluded from resorting to the other for. This position has not been controverted by Mr. Lad the District Judge, at Belgaum in his decision in Appeal No.148 of 1941. He has however preferred to rest his decision "upon the principle that if out of two alternative remedies one is carried to a judgment it will not be permissible to fall back on the other" and the bar does not arise on the ground of any estopp but because the cause of action has merged in the judgment "in support of which he relies on the discussion at pages 415 to 417 in volume 13 of Halsbury's Laws of England, the observations of Lord Atkin in the case of United Australia Limited v Barclay's Bank, 1941 A.C. 1 and those of the Chief Justice of the Bombay High Court in Hanamant Bhimrao v Gururao Swamirao, 44 B.L.R.880. It is no doubt true that it is a general principle that " a plaintiff who has once sued to judgment cannot while the judgment stands although unsatisfied sue him again for the same cause not because he is estopped from doing so, but because the cause of action is merged in the judgment which creates an obligation of a higher nature" (see Halsbury Vol XIII p.415) while affirming that principle Lord Atkin in United Australia Ltd. v. Barklays Bank Ltd (1941 A.C.1) drew a distinction between cases where a plaintiff is entitled to two concurrent and consistent remedies and those where a plaintiff is entitled to one of two inconsistent rights. His observations at p.30 may be quoted with advantage: "On the other hand if a man is entitled to one

one of two inconsistent rights it is fitting that when with full knowledge he has done an unequivocal act showing that he has chosen the one he cannot afterwards pursue the other, which after the first choice is by reason of inconsistency no longer his to choose. Instances are the right of a principal dealing with an undisclosed principal to choose the liability of the agent or the principal: the right of a landlord where forfeiture of a lease has been committed to exact forfeiture or to treat the former tenant as still a tenant and the like. To those cases the statement of Lord Blackburn in Scarf v Jardine (1882, 7 App Cas 345, 360) applies 'Where a man has an option to choose one or other of two inconsistent things, when once he has made his election, it cannot be retracted' In a later passage Lord Blackburn speaks of a man choosing between two remedies but it is plain that he is speaking of remedies in respect of the inconsistent things as stated above." This distinction was stressed more clearly by the Chief Justice in Hanmant Bhimrao v Gururao Swamirao (44 B.L.R.880) where following United Australia Ltd. v Barclays Bank Ltd. (1941, A.C. 1), Scarf V Jardine (1882, 7 App Cas 345) and Morel Brothers & Co.Limited v Westmoreland (Earl of), 1903, 1 K.B.64) it was held: "where a person has two alternative remedies, he can pursue all or any of the remedies up to judgment; but as soon as he obtains judgment on one remedy, he loses the right to proceed on the other. Where however a person has two inconsistent rights, he must make which of them he is going to rely on, and having elected to rely on one right, he is not allowed to retract his election. It is irrelevant in such a case that the action does not proceed to judgment."

Section 59(1) provides for two remedies, which though alternative are not inconsistent. Consequently the

latter proposition enunciated in Hanamantrao Bhimrao v Gururao Bhimrao namely that having elected to rely on one right he is not allowed to retract his election" will have no application to the present case. The only question that falls for consideration is whether the former proposition that a person having two alternative remedies can pursue all or any of the remedies up to judgment but once he has obtained judgment on one remedy he loses the right to proceed on the other, applies to the present case where the society having two alternative remedies for execution of its award under sec.59(1). First elected to pursue the first remedy under sub-clause (a) until it was time barred, could fall back upon the second remedy under sub-clause (b) and proceed to execute the award through the revenue authorities for which no limitation is prescribed.

"The defence of judgment recovered" arising as it does out of resjudicata has much in common with estoppel by record, though it is not founded upon it. A plaintiff who has once sued a debt to judgment cannot while the judgment stands although unsatisfied sue him again for the same cause, not because he is ~~estopped~~ estopped from doing so, (though he as well as the defendant is estopped from averring anything contrary to the record, but because the cause of action is merged in the judgment, which creates an obligation of a higher nature. It is also probably true that a person having once recovered judgment for a sum of money is estopped from averring that he ought to recover any further sum for the same cause of action". (see Halsbury Vol XIII p.415). The proposition that "where a person has two alternative remedies, once

he obtains judgment on one remedy he loses his right to proceed on the other" is therefore as stated by Halsbury founded on the principle of resjudicata by reason of the judgment in which the cause of action is merged and consequently the cause of action for the second remedy no longer survives.

The position would therefore reduce itself to this: whether by reason of resorting to the remedy under sub-clause (a) of sec.59(1) of the Cooperative Societies Act until it was time barred, the other remedy under sub-clause (b) is barred by resjudica. Section 11 C.P.C. which deals with resjudicata provides that no court shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties under whom they or any of them claim litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court. In Ram Kirpal v Rup Kerari (6 All 269) it has been decided by the judicial committee that resjudicata applies to interlocutory orders and execution proceedings. "The ratio decidendi of Ram Kirpal's case is that if a particular construction is put on a decree in proceedings on a former application for execution, it is not competent to the court to treat that construction as erroneous and put another construction on it at a subsequent stage of the execution proceedings" (see Mulla's C.P.C.p.89). In the present case the execution proceedings under sub-clause (a) of section 59(1) of the Bombay Cooperative Societies Act have been held to be time barred and consequently the execution proceedings if taken afresh in the civil court would be barred by resjudicata. The mode of execution

under sub-clause (b) of section 59(1) is inddpendent of that under sub-clause (b) of section 59(1) an is pursued through the Collector who is not a court. It is therefore obvious that the remedy under sub-clause (b) would not be barred by resjudicata and would be governed by the provisions of the Land Revenue Code, 1879 which apply to the recovery of dues as arrears of land revenue Consequently the society would not be precluded from executing its award under sub-clause (b) of sec.59(1). The view taken by Mr. Lad (D.J., Belgaum) does not appear to be sustainable.

It is true that Govt. acquiesced in the decision of Mr. Lad (D.J., Belgaum) in appeal No.148 of 1939; but the decision rested on two grounds one of which was difficult to be dislodged in the High Court and consequently it was not worthwhile to take up the matter to the High Court, although the second ground, namely that once the remedy under sub-clause (a) of sec.59(1) of the Bombay High Court was time barred, the other remedy under sub-clause (b) was also barred, could have been challenged. Since 1930 the R.L.As. have consistently held that even though the remedy under sub-clause (a) is barred, there is no objection to pursuing the remedy under sub-clause (b) There may have been numerous cases where that view of the R.L.As. must have been followed and not a single case has been so far taken to the High Court. It involves really a very important point of law and the decision of the High Court would be very useful. Consequently the Commr. may direct the execution proceedings in the present case to continue and leave it to the other party to have recourse to the Civil Court if deemed necessary.

RR 12/6

ALR

ALK. The question is not free from doubt but I agree with Mr. Gautam and S.A.S. At any rate I think the proper tactics is for Govt. to pursue its remedy & have the point settled. The notes will provide useful matter if there is a suit but it is unnecessary to reply at length. I suggest this reply :-

The question is not free from doubt and it is desirable to have it settled by an authoritative decision of the High Court. The execution proceedings should be continued. If a suit is filed, it can be defended.

NSH
13/6

RLA I agree. Since the question is not free from doubt it is desirable to have an authoritative ruling on it. We may .. advise executive proceedings to continue

P. Rau
14/6/44

Mr. Raja
Sir
26/6

Report under rule 11c of the Law Officers Rules in respect of Civil Suit No. 166/1944 of th Court of First Class Sub-Judge, Bijapur.

.....

Udapirao Venkatrao Jahagirdar of Balkundi Taluka Hungund now residing at Bijapur.

V.S.

1. The Province of Bombay.
2. The Dharwar Urban Co-operative Credit Bank LTD- Dharwar, now under liquidation by its Liquidator at Dharwar.

.....

This is a suit for the following reliefs :-

a) that it be declared that the claims in Award No.19[illegible] of 13-3-1927 cannot be recovered by the Defendant - through the Collector under section 59 (1)(b) of the Bombay Co-operative Societies Act 1925 or under any other Law or rules for the time being in force for the reasons stated in th plaint.

(b) that a perpetual injunction restraining the continu-ation of the recovery proceedings by the Defendant-Bank under section 59 (1) (b) of the Bombay Act VII of 1925 or otherwise be granted against the Defendant,

c) that the remedies, if any, available to the Defendant-Bank under the Arbitration Award in matter of recovery of the amount as alle-ged to be due thereunder be declared to be barred,

d) that the Plaintiff be awarded the costs of the suit and other necessaries and incidental reliefs, considering the unnecessary harassment and anxiety that the Plaintif is put to by the unauthorized and illgal action of the Defendant Bank; and,

e) the Plaintiff be allowed the liberty to amend the Plaint, if necessary, after the Defendants put in their written statement.

Notice of suit to the Province of Bombay under secti 80 C.P.C is dated 25-11-43 and was received in the Collector's Office on 6-12-43. The suit was filed on 3-8-44 and is fixed for putting in written statement on 11-9-44.

The.....

The facts of the case and the circumstances which led to the suit are as under :-

The Plaintiff-Mr. Udapirao Venkatrao Jahagirdar applied to the Dharwar Urban Co-operatice C. Society, Dharwar for a loan of Rs. 3500/- for discharge of old debt and for building a house. The Bank advanced a loan of Rs. 2000/- only on 12-1-23 to him for discharge of debts and for building on a simple mortgage of a plot of building site at Dharwar and 16 Survey numbers of Balkundi, Taluka Hungund with two sureties as shown in the copy of the mortgage deed at page 129 file 1. As no payments payments were made by Mr. Udapirao for over three years from the date of advancement of the loan, his case was referred to arbitration and the Bank obtained an Award No. 198 of 13-3-27 against him for Rs. 2670-5-0, and got it certified by the Assistant Registrar for execution through the Civil Court under section 59(1)(a) of the Bombay Co-operative Societies Act 1925. After getting the Award so certified, the Defendant No. 2 filed a Darkhast in the Dharwar Sub-Judge's Court for execution of the Award and the Plaintiff's open plot was sold and an amount of Rs. 450/- was recovered.

With a view to proceed further against the mortgaged property situated in Hungund taluka, the Bank got the Award transferred to the Sub-Judge's Court at Bagalkot in 1934, and the sale of some survey numbers out of the mortgated property was actually held in 1936 by it. But the Plaintiff-Mr. Udapirao appealed to the District Court for getting aside the sale. The sale was ultimately set aside by the District Judge in appeal. The Defendant No. 2 again continued the execution of the Award in the said Court for resale of the lands, The Plaintiff in the mean-while appeared and contended that the darkhast was time barred. The sub-judge Bagalkot dismissed the Darkhast in 1940 as time barred

Thereupon the Bank got the Award certified by the Assistant Registrar under section 59 (1)(b) of the said Act.....

Act for its execution through the Revenue Courts; and now the proceedings are pending before the Collector.

But one Mr. Vyasarao Gururao Jahagirdar suddenly has appeared at this stage of the proceedings and has contended that the survey numbers mentioned in the mortgage bond in question are in his possession, that they stand in his name in the Record of Rights and that Mr. Udapirao has no claim of what so ever over the same. He further contended (please vide 85 file No. 1) that S.Nos. 4,230,301,313, 299, and 11/1 of Balkundi, Taluka Hungund were held jointly both by himself and Mr. Udapirao and that Mr. Udapirao has got 1/5 share in S. No 183 and 141 of Balkundi. It was also found on them - examination of the old village records that the mortgage encumbrance was not entered in the Record of Rights again the lands of Balkundi, mortgaged to the Bank.

With a view to make an enquiry regarding the joint ownership of the property mortgaged to the Bank both the Special Liquidator, Dharwar Urb Co-operative Bank and the Special Recovery Officer, Bagalkot visited the village Balkundi on 29-9-42 and found that the lands mortgaged to the Bank were held by Vyasarao Gururao Jahagirdar, that late Mr Gururao the father of Vyasarao and Mr. Udapirao together were the owners of 1/4th share of Balkundi village which is a Jat Inam Village, that the land stood in the name of Vyasarao Minor guardian Mr. Udapirao, when the Record of Right first introduced in the Village; that some of the lands were jointly sold by Messrs Vyasarao and Udapirao. In view of the above observations; the family was held to be a joint one.

The District Government Pleader, Bijapur, who was consulted in the matter opinesthat there are suffiei reasons to hold that Mr. Udapiraor has a joint half share in the immoveables of the family. Mr. Vyasarao Jahagirdar again applied to the Collector asserting that the lands in question are his, and Mr. Udapirao has no interest of what soever over the same. He therefore

therefore requested the Collector to enquire in the matter again. The matter was again referred to the District Government Pleader, Bijapur, who opined that it would be advisable to get the right title and interest of Udapirao in the 6 lands held jointly, attached and sold reserving of course the right to proceed against the mortgaged property. Accordingly the Collector ordered the sale of the right, title and interest of Udapirao in these 6 lands, and the execution proceedings were again continued. The Plaintiff being aggrieved by the measures resorted to by the Special Liquidator under section 59(1)(b) for the recovery of the amount through the Revenue Court, applied to the Commissioner requesting him to cancel the proceedings pending before the Collector. The Commissioner referred the matter to the Remembrancer of Legal Affairs as to whether the execution proceedings in the this case should be continued or not. The Remembrancer of Legal Affairs in his letter No. 4509 dated 27-6-44, opines that the question is not free from doubt and so it is desirable to have it settled by an authoritative decision of the High Court. He, however, suggested that the execution proceedings in the case in question should be continued (please vide page 325 file 1). The Commissioner there-upon directed the Collector to continue the execution proceedings and also to inform the applicant Mr. Udapirao that his request for cancellation of the proceeding is refused.

The Plaintiff being thus aggrieved by the order of the Revenue Authorities (viz of the Collector and Commissioner) has filed a suit praying for the reliefs stated above.

Remarks

The principal point in this case is as to whether after proceeding in the manner laid down in section 59(1)(a) and after taking a finding from the Civil Court that the proceedings is not in time, it is open to proceed under section 59(1)(b) of the Bombay Co-operative Societies Act.

Act 1925. There appear to be no decided cases on the points. However it may be noted that the Remembrancer of Legal Affairs in his Memo No. 6620 of 26-7-41 refers to the Remembrancer of Legal Affairs's opinion No. O. Co-op 7/30 dated 24-11-30, where-in he has interpreted section 50(1) of the Act, to mean that it is at the option of the person in whose favour the orders referred to therein are passed, to have them executed in any of the modes - specified therin, and that the party choosing one method is not precluded for ever from trying the other. He also refers to the Remembrancer of Legal Affairs's opinion No. opinion No. 5141 dated 9-9-35 in which it is stated that there is no time limitation prescribed for the execution of the Award under section 59(1)(b) i.e. for recovering the amount dues as an arears of land recenue. The Remembrancer of Legal Affairs in his Memo dated 26-7-41 opines that there is no legal objection to the Liquidator resorting to the remedy prescribed under section 59(1)(b) even though the remedy under section 59(1)(a) is exhausted.

In view of the above referred opinions of the Remembrancer of Legal Affairs, the suit can be defended. The District Government Pleader, Bijapur may kindly be given necessary instruction in the matter.

Collector of Bijapur.

29

Submitted.

2. This relates to a suit filed by Mr. U.V.Jahagirdar against the Province of Bombay and the Dharwar Urban Co-operative Credit Bank Ltd. The main point involved is the construction of sec. 59(1) of the Bombay co-operative Societies Act, 1925. When a notice under sec. 80 was given by the plff. the case was referred to R.L.A. the papers in which the case was discussed are put up at slip S. Files O.Co-operative/41 and Vol. O. Cooperative 28-34, containing relevant opinions are also put up. The papers of Belgaum suit, which was similar to this suit are also put up. (A.Second Appeal is going an in that case, but it has not come up for hearing). The D.G.P. is going to take adj. of one month in this suit on 28th Oct. 1944.

at slip H

9/10

A.S.

D. O. No. 7007

Legal Department.
Bombay Castle, 22nd December 1944.

Dear

B.2 Suit

It appears from your letter No.981, dated the 30th October (November) 1944, that Bijapur Civil Suit No. 166 of 1944 is fixed for filing written statement on behalf of Government on the 23rd December 1944. The suit is receiving my attention at present but it will not be possible to obtain the sanction of Government to its defence before the middle of January 1945. Will you please, therefore, see the Sub-Judge personally and ascertain whether another adjournment till the last week of January, 1945 is possible and communicate the information so received to me immediately.

Yours

Issued 22/12

Subj. for signature.

To

A.C. Angadi, Esquire, LL.B.,
District Government Pleader, Bijapur.

Submitted after issue of corr.

2002
23/12

AS

Draft defence under Rule 118 of the Law officers' Rules in the Civil Suit filed by Mr. Udapirao Jagirdar in the I class Sub-judge Court Bijapur.

----------oOo----------

I) Civil Suit No. 166 of 1944. ✓

ii) The Suit was instituted on 27-3344 and registered on 3-4-44 in the I class Subordinate Judge Court Bijapur.

iii) Plaintiff:- Udapirao Venkatrao Jahagirdar, Brahmin, Age 58, of Balkundi, Taluka Hungund, now residing at Bijapur (Ramprasad Galli).

Defendants:- 1. The Provincial Government, the -- Bombay Province.
2. The Dharwar Urban Cooperative Credit Bank Ltd., Dharwar, now under liquidation, by its Liquidator at Dharwar

vi) As the Suit is for a declaration with consequential relief, the claim amount is shown at Rs. 5/- only.

v) The first hearing of the Suit i.e. the date fixed for the appearance of the Defendant in the Suit was on 3-8-44.

vi) A copy of the notice served on the Registrar under Section 70 of the Bombay Coop: Societies Act 1925, was served on the Liquidator of the Dharwar Urban Coop: Bank, by registered Post on 10-12-43. As the notice purports to be both under Section 80 of the Civil Procedure Code and Under Section 70 of the Bombay Coop: Societies Act 1925, and as the Bombay Provincial Government, the Bombay Province, Bombay (The Collector of Bijapur) is shown to be one of the persons to whom a copy of the notice is sent, it seems that a notice under Section 80 of the -- Civil Procedure Code was served on the Collector of Bijapur about 10-12-1943.

-S-i- 4/9

This relates to Bijapur Civil Suit No.166 of 1944. The only question is of the construction of section 59(1) of the Bombay Co-operative Societies Act, 1925. The defendant No.2 Bank obtained an award under the Act against the plaintiff in 1927. The Bank then commenced execution in the Civil Courts. Some amount was realised in 1932 but the next darkhast came to be dismissed on 30th July 1940 on the ground of limitation. The Bank acquiesced in that decision, but afterwards obtained a fresh certificate from the Registrar and commenced execution proceedings before the revenue authorities. Plaintiff contends that these latter proceedings are illegal and sues for an injunction etc.

Plaint Slip H

2. The question is not free from doubt and was extensively considered recently in this Department: Vide R.L.A's opinion No.4509, of 27th June 1944. An appeal from a Belgaum Suit on the same point is pending in the High Court.

Slip S

× Judgment of D.J. at Slip 9.

3. Defendant No.1 is Government. Defendant 2 is the Co-operative Bank under Liquidation. The Registrar and the Reconstruction Department have moved for defence being undertaken on behalf of defendant 2 also.

4. A plea has been raised that the suit is barred under section 51 of the Co-operative Societies Act. The Registrar has referred to Article 14 of the Limitation Act also, but that article will not apply if the order or Registrar's certificate was invalid. Hence the plea of limitation has not been taken.

5. Defence of the suit may be sanctioned in accordance with the appended brief. A draft written statement is also put up. The District Government Pleader should be requested to verify the dates and other statements in the plaint about Civil Court proceedings before filing the written statement.

dr
12/1

AALR I think the plea of limitation should also be raised, since it is our case that the Reg's certificate was valid. Is there any objection?

MAS If the certificate was valid, that decides the question at issue here.

D.C.

the proceedings under S. 59 (1)(b) are lawful. If the certificate is found invalid, limitation does not apply. In neither case does the plea of limitation then arise. Article 14 of the Limitation Act or S. 11 of the Revenue Jurisdiction Act have lost most of their meaning or validity in such cases on account of the Full Bench decision in 44 Bom LR 577. The District Judge Belgaum has also refused to apply article 14, (See para 5 of the judgment which commences at page 9)

16/1.

AAG Limitation was not be raised. I agree. AG's proposal should be approved.

16/1.

RA

Rums 23/1/45

No. 751 d. 24/1/45.

Secy R.D. 24-1-45

Secy R.C.D

RLH

3) 7 59

IN THE COURT OF THE FIRST CLASS SUBORDINATE JUDGE, BIJAPUR.

Civil Suit No.166 of 1944.

Udapirao Venkatrao Jahagirdar.....Plaintiff;

v/s

1.The Provincial Government, The Bombay Province..
2.The Dharwar Urban Co-operative Credit Bank, Ltd., Dharwar, now under liquidation by its Liquidator at Dharwar..... } Defendants.

The written statement of the defendants herein is as follows:-

1. The plaintiff's claim is not true and is not admitted.

2. Plaintiff has not obtained leave of the Registrar as provided by section 51 of the Bombay Co-operative Societies Act and the suit is barred under that section.

3. Defendants do not admit that plaintiff contracted the loan for and on behalf of the Karnatak High School or for the objects stated in paragraph 2 of the plaint. The loan was for redemption of old debts and for building of a house.

4. The various contentions raised by the plaintiff against recovery of the award are misconceived. The defendant Bank was entitled to either or both of the remedies provided in section 59(1) of the Bombay Co-operative Societies Act, 1925 and is not precluded from executing the award befo he revenue authorities on accou of the earlier execution proceedings in the Civil Courts. Similarly the dismissal of the darkhast No.172 of 1933 on 30th July 1940 on the ground of limitation does not extingu the defendant Bank's right to recover the amount of the award by executing it as at present before the revenue authorities.

5. It is not true that the Liquidator's action is taken under clauses (d) and (f) of section 50 as alleged in paragraph 9 of plaint. The award is being excuted through the revenue authorities under section 59(1)(b) of the Act. The proceedings are lawful.

6. Plaintiff's contention that section 51 is ultra vires etc. as alleged in paragraph 9 of the plaint is denied.

7. The proceedings taken by the defendant Bank and the actions of the Registrar, the Assistant Registrar and the Liquidator are lawful and plaintiff is not entitled to the declarations and injunction or any other relief sought. The suit should be dismissed with costs.

.....

District Government Pleader, Bijapur.

I, District Government Pleader, Bijapur, do hereby declare that what is stated in paragraphs 1 to 7 above is true according to the information received and believed to be true. This verification is made at this day of 1945.

District Government Pleader, Bijapur.

Suits :

Bijapur.

For a declaration that the award No. 198 dated 13th March 1927, is no longer executable and for an injunction restraining the Defendants from continuing the recovery proceedings under section 59 (*1*) (*b*) of the Bombay Co-operative Societies Act, 1925.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 836-A.

Bombay Castle, 27th January 1945.

Letter from the Collector of Bijapur, No. LAW. 170, dated the 16th September 1944—

IN THE COURT OF THE FIRST CLASS SUB-JUDGE, BIJAPUR.

Civil Suit No. 166 of 1944.

Udapirao Venkatrao Jahagirdar ... ... Plaintiff

versus

(1) The Provincial Government of Bombay; (2) The Dharwar Urban Co-operative Credit Bank, Ltd. (under liquidation by its Liquidator) ... ... Defendants.

Claim—Rs. 5.

Forwarding papers in the suit noted in the margin ; and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. LST. 323, dated the 22nd September 1944—Forwarding the above with his concurrence.

Letter from the Registrar of Co-operative Societies and Director of Rural Development, Bombay Province, Poona, No. LQD.-2007, dated the 11th December 1944, to the Secretary to Government, Revenue Department—Forwarding papers and requesting sanction to the defence of the suit.

Memorandum from the Reconstruction Department, No. 6142-H/39, dated the 10th January 1945—Transferring the above.

Memorandum to the District Government Pleader, Bijapur, No. 836, dated the 27th January 1945—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. N. MOOS,
Secretary to Government.

G. R. No. 836-A, L. D., dated the 27th January 1945.

To

* The Revenue Department,
* The Reconstruction Department,
* The Commissioner, Southern Division,
* The Registrar of Co-operative Societies and Director of Rural Development, Bombay Province, Poona,
* The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1945.

Copy forwarded for information and guidance to

Issued
Submitted after 4
2 File in Sanj/45 (new file)
PA

9/1941

BIJAPUR CIVIL SUIT NO. 166 OF 1944.

Chronological Statement of Facts.

The plaintiff sues for a declaration that the award No. 198, dated 13th March 1927, obtained against him by the defendant No. 2 is no longer executable and for an injunction restraining the defendants from continuing the recovery proceedings commenced by them under section 59 (*1*) (*b*) of the Bombay Co-operative Societies Act, 1925.

2. On 12th January 1923, the plaintiff obtained from the Defendant Bank a loan of Rs. 2,000 on a simple mortgage of a building plot site at Dharwar and some survey numbers of Balkundi village in Hungund Taluka of the Bijapur District. On 13th March 1927, the defendant Bank obtained against the plaintiff an award for Rs. 2,670-5-0 with future interest, etc., in arbitration under the Bombay Co-operative Societies Act.

3. No payment being made by the plaintiff, the Assistant Registrar issued a certificate and a darkhast was filed in 1928 under section 59 (*1*) (*a*) of the said Act in the Court of the First Class Sobordinate Judge at Dharwar. The building plot was sold and Rs. 450 realised on or about 11th February 1932.

4. The award was then transferred to the Court at Bagalkot and darkhast No. 172 of 1933 was filed there. On or about 22nd January 1936, a sale was held of some of the survey numbers in the mortgage; but the sale was set aside in appeal by the District Court. The defendant Bank continued the execution in the same darkhast (No. 172 of 1933), but this time plaintiff pleaded limitation. The Court upheld the plea of limitation and dismissed the darkhast on 30th July 1940. No appeal was preferred by the defendant Bank.

5. On 18th December 1940, the Assistant Registrar issued a fresh certificate under section 59 (*1*) (*b*) of the Act and the award was sent to the revenue authorities for recovery under the said section.

6. While the proceedings before the revenue authorities were pending, plaintiff gave notice of suit under section 80 of the Civil Procedure Code on 25th November 1943 and filed the present suit on ~~3rd August 1944~~ 27th March 1944 for the reliefs set out above.

A
vide office NO 6631
dated 8-9-45.

Grounds of Defence.

This case turns upon the construction of section 59 (*1*) of the Bombay Co-operative Societies Act, 1925. Before the Act an award could be executed only through the Civil Courts, but the Act provided an alternative remedy of execution through the Collector. Section 59 (*1*) provides that an award may be executed (*a*) by a Civil Court in the same manner as a decree of such Court, *or* (*b*) according to the law and under the rules for the time being in force for the recovery of arrears of land revenue. The plaintiff appears to contend, first, that a society which adopts one of the remedies at first is thereby debarred from pursuing the other remedy afterwards. This means that a society which has obtained an award is required to elect once for all the forum it will approach for execution so as to be thereafter precluded from resorting to the others. It is clear however from the section that the duty laid upon the Court or the revenue authority to execute the award upon the registrar's certificate is not expressed to be conditional upon there having been no proceedings taken before the other tribunal. The section itself therefore does not expressly support the argument about election. Nor could any support be found for such an argument from the use of the conjunction " or ". To carry out the intention of the legislature, it is occasionally found necessary to read the conjunction " or " and " and " as interchangeable. If the intention of the legislature in this case had been that the party choosing one remedy should be precluded forever from trying the other, it would have

made an express provision to that effect. Lastly the argument in favour of election has been impliedly rejected by the High Court in Maratha Co-operative Bank *v.* Keshav, 40 Bom. L.R. 889. It was actually held there that a proceeding before the Collector would not avail as a step-in-aid to save limitation in the Civil Courts ; but it is important to note that the competency itself of the Civil Courts to execute an award in spite of an earlier proceedings before the Collector was not challenged in that case. This decision thus implies that there is no objection to pursuing either or both of the remedies provided in section 59 (*I*). Normally execution is not complete by a single proceeding but involves repeated proceedings. Section 59 (*I*) appears to contemplate that a society should have the choice of forum every time it is about to take proceedings.

2. While thus it is clear that the principle of election does not apply in this case, the plaintiff nevertheless further contends that if a society pursues the remedy in the Civil Court and pursues it completely until it is time-barred or exhausted there, it will not be open to it afterwards to resort to the other remedy. Such a contention is open to several objections. First, once it is granted that there is no election and that the two remedies are independent and not inconsistent (40 Bom.L.R. 889), any one remedy as a matter of equity should cease to be available only if there has been complete recovery and satisfaction through the other remedy. What really needs to be avoided is double satisfaction. Secondly, even in law, the effect of the Civil Court remedy being time-barred is misunderstood. A law of limitation ordinarily has the effect of barring the particular remedy to which it applies, and does not extinguish the right itself: Chitaley and Iyer's Limitation, Vol. I, p. 121. Therefore the decision of the Civil Court in this case cannot *per se* destroy the rights of the society under the award and cannot prevent it from adopting any lawful means for enforcing them. Thirdly, the language employed by plaintiff stating his contention shows that he is applying a principle which has no relevance to these proceedings. Plaintiff expresses himself as follows in paragraph 9 of the plaint: "The award was *merged into a decree* of a Civil Court and the *mortgage thus became extinct* and the execution of the said award decree.... *was decided between the parties* as time-barred.... After choosing the remedy in a Civil Court and pursuing it completely up to the judgment in the Court and after getting a decision in that proceeding against the decree-holder, it does not lie to the defendants to resort to the second remedy in such a way *as to defeat the decision of a Competent Court which is binding on both the parties.*" This is language about *res judicata*, which principle does not apply here. Halsbury has thus explained "cause of action merged in judgment" in Laws of England, Vol. 13, page 415: "A plaintiff who has once sued a defendant to judgment cannot, while the judgmet stands, although unsatisfied, sue him again for the same cause, because the cause of action is merged in the judgment, which creates an obligation of a higher nature." As has been explained already, the society's rights under the award, its cause of action so to say in these proceedings did not merge in the final decision of the Civil Court and were not extinguished by it. By the decision, the particular remedy only was barred, but the rights did not become extinct.

3. There are two recent cases which deal with election and inconsistent rights and alternative remedies. In United Australia *v.* Barclays Bank, 1941 A.C. 1, the plaintiffs-appellants, according to the English form of pleadings, had two alternative remedies, the one in contract, the other in tort, and the pursuit of one, in the absence of judgment and satisfaction, was held not to constitute a bar for the other. This will be clear from the head-note which runs as follows: "The appellants by merely initiating proceedings against the M. Company for money lent or for money had and received had not thereby elected to waive the tort so as to be precluded from bringing the present action in tort. In such a case it is judgment and satisfaction in the first

H3 92

action, and not merely the bringing of the claim, which constitutes a bar to a second action." The second case is Hanmant *v.* Gururao, 44 Bom.L.R. 880. This was a case not of alternative remedies, but of inconsistent rights, and hence does not directly apply to the case before us. But Beaumont, C. J. in his judgment has referred to United Australia *v.* Barclays Bank, in explaining the distinction between inconsistent rights and alternative remedies. In dealing with the former the learned Chief Justice observed thus : " Having in this case issued a darkhast to recover the whole amount, he has, in my view, unequivocally elected to stand on his right under the decree to recover the whole amount in one sum, and he cannot afterwards go back on that election, and proceed to recover the amount in instalments." That there was no question of election in the present society's case has been amply explained already.

4. *Bar of suit.*—The suit is clearly barred under the latter part of section 51 of the Co-operative Societies Act : " When a winding up order has been made no suit or other legal proceeding shall lie or be proceeded with against the society except by leave of the Registrar and subject to such terms as he may impose." Plaintiff's only contention in this respect is that section 51 " encroaches upon the elementary rights of a person " and is *ultra vires*. The contention is misconceived because the Co-operative Societies Act is a special Act and plaintiff's rights with regard to the award and its execution are the creation of that Act. " It is an essential condition of those rights that they should be determined in the manner prescribed by the Act, to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary courts, for they never had any (Maxwell on Statutes, Chapter V), there is no change of the old order of things ; a new order is brought into being." (Per Jenkins C. J. in Bhaishankar *v.* Municipal Corporation of Bombay, 9 Bom.L.R. 417 at p. 437).

Plaintiff's rights must thus be determined under the Act, and section 51 is not *ultra vires*.

5. The plaintiff appears to think that the liquidator's action in enforcing the award was taken under clauses (*d*) and (*f*) of section 50. This is not correct. The Liquidator continued the execution proceedings in order to realise the debts due to the defendant Bank, and his present action is under section 59 (*1*) (*b*). Clause (*d*) of section 50 enables a liquidator to determine the contribution due from a member, and such contribution may include debts. But liability for contribution is a different thing from liability for debts (see Gupte at p. 337, October 1939 edition) and it is only the latter as determined by the award that the liquidator is trying to realise under section 59 (*1*) (*b*). It is true that he has power also under clauses (*d*) and (*f*), but it has not been exercised as yet.

6. For all these reasons it should be contended that the suit fails and should be dismissed.

Now for Bijr/us

11/7/us

Civil suit No. 166 of 1944.

In the court of the Civil Judge, Senior Division, Bijapur.

1. Udapirao Venkatrao Plff.

Vs.

1. The Bombay Province and another. Defts.

To,

The pleader for defts.

Sir,

You are hereby called upon to answer the following interrogatories within 10 days from the receipt of this notice.

1. Do you admit that the plff had contracted a debt of Rs.2000/- with your client and an arbitration award was obtained on 13-3-1927 under Sec. 54 of the Bombay Co.operative Societies Act ?

2. Do you admit that deft 2 obtained the certificate of the Registrar in 1928 in order to execute the same under sec. 59(1) (a) of the said Act ?

3. Do you admit that deft 2 filed darkhast No. 728/1928 in the F.C. Sub-Judge's court at Dharwar and that darkhast was disposed of on 30-6-1931 as partly satisfied.

4. Do you admit that deft 2 applied for transfer of decree to the Bagalkot II class Sub-Judge's court in C.No. 163/1932 of the Dharwar F.C. Court and the certificate was issued as prayed for on 13-7-1932 ?

5. Do you admit that deft 2 filed darkhast No. 172/1933 in the court of the II class Sub-Judge Bagalkot and some of the lands of the plff were sold in that darkhast ? Do you further admit that the said sale was set aside by the District Judge of Bijapur on 13-8-1936 in Regular appeal No. 44/1936 ?

6. Is it not a fact that deft 2 continued execution of the decree in the same darkhast for re-sale of the lands ?

7. Is it not a fact that the plff contended in those proceedings that the darkhast was time barred under Art. 81 of the Indian Limitation Act and the contention of the plff was upheld and the darkhast was dismissed on 30-7-1940, as barred by time

8. Do you admit that the officers of deft 1 are again

proceeding with execution under a certificate issued under sec. 59(1) (b) of the Bombay Co-operative Societies Act ?

Please answer the above interrogatories with an affida vit under the provisions of Or. 11 rule 9 C.P.C.

29th June 1945.

Sd/ J.R. Desai.

Pleader for plff.

No. 490 of 1945. 47 G1
9-7-45.

To,

The Remembrancer of Legal Affairs,
Secretariat Bombay.

Subject :- Bijapur civil suit No. 166/44. 5816

Sir,

A 11-7-45

I have the honour to submit herewith a copy of the notice and a copy of the interrogatories required to be answered by me.

2. There does not appear to be any objection to produce the documents 1 and 2 referred to in the notice.

The papers/of which inspection is claimed are mentioned in a vague way. The plff is not entitled to inspection.

3. The answers to the interrogatories shall have to be in the affirmative.

I therefore request you to direct me as to whether I should produce the documents referred to in para 2 above (by getting them from deft 2), as to whether I should reply that plff is not entitled to ~~inspection~~ inspection and as to whether

I should answer the interrogatories in the affirmative

The date fixed for hearing is 16.7.1946

Your obedient servant

Agurgat

District Government Pleader,
Bijapur.

5816
11-7-46

Submitted with Ltr (S. Bij 2/45)

Bmb
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P.A. In Bijapur Suit No 166 of 1944 the A. G. P. has received from the Plaintiffs' pleader a notice to produce certain documents and answer certain interrogatories. (See below.) The documents at serial No 1 and 2 in the notice are the mortgage bond and the award obtained thereon by the defendant No. 2 (Bank) in arbitration under the Bombay Cooperative Societies Act (See C.S.J. para h. 91) There is no objection to produce these two documents. In the concluding para of the notice the plaintiffs demands an inspection of all

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In the Court of the Civil Judge, Senior Division,

At Bijapur.

Civil Suit No. 166 of 1944.

1. Udapirao Venkatrao Jahagirdar, caste Brahmin, age 58, Residence Balkundi Taluka, Hunagund, now residing at Bijapur..... Plaintiff.

Vs.

1. The Privincial Government, the Bombay Province.

2. The Dharwar Hurban Cop-opertaive Credit Bank Ltd., Dharwa , now under liquidation by its Liquidator at Dharwar.... Defendants.

Claim Rs.-

The plaintiff sues for declaration that claim in Award No. 198 of 13-3-27 cannot be recovered by defendant s through the Collector under section 59 clause 1 caluse B of the Bombay Co-operative society Act of 1925; for a perpetual injun-ction restraining the defendants from executing the recovery proceedings, for antoher declaration to the effect that the remedies available to the defendant Bank, under the Arbitration Award are barred, and for costs of the suit, alleging that the plaintiff was a member of Deft No.2's Bank when he was serving as a teacher in the Karnatak High School at Dharwar prior to 1927, that he borrowed Rs.2000/- from Deft No. 2 Bank, on behalf of the School in his own name, that the Deft No.2 Bank referred the matter to Arbitration and got an Award for Rs. 2670-6-0 unde section 54 of the C.S.Act, on 13-3-1927 and obtained a certific-ate of the Registrar in 1928, under section 59 clause 1 clause A of the said Act; that the defendant Bank filed Darkhast No. 728/1928 in the Darwar First Class Sub Judge's Court, for the recovery of the amount by the sale of the open plot belonging to him; that his open plot was sold and deft No.2 Bank recovered Rs.450/- and the darkhast was disposed of on 30-6-1931; that Deft No.2 Bank got the decree transferred toBagalkot Court on 13-7-1932; that deft 2 Bank filed Darkhast No. 172/1933 in Bagalkot court for the recovery of the amount by the sale of his lands in Hungaund taluka; that in that darkhast, plaintiff plead-ed that it was time barred under article 181 of the Indian Limitation Act, that the learned trial Judge of Bagalkot held

that the execution was time barred and dismissed the darkhast on 30-7-1939; that pending the above execution in Bagalkot court, the deft 2 Bank went into liquidation by the end of 1939 or in the beginning of 1940; that a single liquidator Mr. S.R. Acharya was appointed by the Registrar and that liquidator is in management of deft No. 2 Bank; that the plaintfff moved the Assistant Registrar of Dharwar by an application dated 5-11-1940, praying therein, not to allow the liquidator to pursue further execution by issuing a fresh certificate, that the Assistant Registrar issued a fresh certificate exparte on 18-2-1940 under section 59 clause 1 clause B of C.S.Act; that he went in Appeal to the Registrar and to Government but they were rejected; that the execution is pending at present before the Collector of Bijapur, that the Assistant Registrar has no authority to give a fresh certificate to recover the Award claim under section 59 olause 1 clause B of the said Act when the decree has been once declared as time barred bya competent court; that deft No.1 has no right to recover the calim as arrears of land revenue; that deft No. 1 has no right to recover the claim as arrears of land revenue; that the revovery proceedings are ultra vires; that the cause of this suit arose in May 1941 when the plaintiff was served with a demand notice for the first time by the Recovery Officer Bagalkot; that the notice as required by section 80 of C.P.C. and section 70 of C.S.Act has been duly delivered to the Registrar, the defendant liquidator and the Collector.

The defts No.1 and 2 by written statement Exh.16 that the date of fresh certificate issued by the Assistant Registrar is 18-12-1940 and not 18-2-1940 ; that the suit is time barred under section 51 of C.S. Act for want of leave from the Registrar; that the dismissal of darkhast No.172/1943 on the ground of limitation does not extinguish that deft 2 Bank's right to recover the amount as arrears of land revenue under Section 59 clause 1 clause B of C.S.Act; that the execution proceedings pending before the Collector, are quite legal; that Plaintiff is not entitled to any relief that the suit to be dismissed with costs.

The issues for trial as per Exh.19 are:-

1. Is it proved that the dismissal of the darkhast No.172/1933 on 30-7-1940 on the ground of Limitation extinguished the

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defendant Bank's rights to recover the amount of the award by executing it before the Revenue Authorities, as provided under Section 59(1) of Bombay Co-operative Societies Act?
2. Are those proceedings illegal ?

3. Is Section 51 of Co-operative Societies Act ultra-vires ?

4. Is the suit barred under Section 51 of the Bombay Co-operative Societies Act ?

5. Is plaintiff entitled to declaration and injunction sought ?

6. What order.

My findings are:-

(1) No. (2) No. (3) No. (4) No. (5) No. (6) As per order.

REASONS.

1. Plaintiff was a teacher in Karnatak High School at Dharwar-Plaintiff borrowed Rs.2000/- from Deft 2 Bank. The Deft No.2 Bank referred the dispute to Arbitration and got an award for Rs.2670-5-0 under Section 54 of C.S.Act on 13-3-27. The Registrar issued a certificate under Section 59 clause(1) clause (A) of C.S.Act. On the strength of this certificate, the deft Bank filed darkhast No. 728/1928 in Dharwar first Class Sub-Judge Court and recovered Rs.450/ and that darkhast was disposed on 30-6-1931.

2. Then Deft 2 Bank got the decree transferred to Bagalkot Court and filed Darkhast No.172 of 1933 in Bagalkot Court for the recovery of the decretal amount. In the above Darkhast, plff raised a plea of limitation. The learned trial Judge of Bagalkot accepted that plea and dismissed that darkhast on 30-7-1940.

3. Pending the execution of the above darkhast, the deft Bank went into liquidation and one liquidator was appointed.The liquidator then applied to the Assistant Registrar to issue a fresh Certificate under Section 59 clause (1) clause (B) of C.S. Act. A fresh certificate was accordingly issued by the Assistant Registrar and the liquidator is executing the decree at present before the Collector of Bijapur. Plaintiff complains that when one remedy was held to be time barred by the Civil Court, the Assistant Registrar has no authority to issue a fresh certificate to the liquidator. Okaintiff therefore prays for a declaration that the Act of the Assistant Registrar in issuing a fresh certificate was ultra vires,. He also prays for an injunction restraining the def

deft Nl.1 Government from recovering the amount as arrears of land Revenue.

4. The defence of Defts 1 and 2 is that the Assistant Registrar has power to issue a fresh certificate under Section 59 clause(1) clause(B) of C.S.Act inspite of the finding of the Civil Court.They deny the right of plaintiff to seek the present remedy.

5. Issue Nos. 1 and 2.

The parties did not lead any oral evidence vide Ex.37. Learned pleaders on both sides argued the case. At the end of arguments they brought to my notice that in two appeals pending before the High Court, the present point was going to be adjudicated upon. I was therefore inclined to defer pronouncing the judgment till the decision of this point by the High Court. I passed an order Exh.38 accordingly.

6. Raosaheb Angadi brought to my notice the fresh case reported in Muppanna Malkappa Vs. Shri Gajanan 49 Bombay Law Reporter page 168. In the above case which is reported in February Issue of 1947, it is held by the Bombay High Court that a Registrar has power under section 59 clause(1) clause(B) of C.S.Act to issue a fresh certificate inspite the fact the decree issued under first certificate under section 59 clause (1) clause(A) was held to be time barred by any competent Civil Court. The above case is on all its fours with the present case. It is therefore unnecessary on my part to discuss this point any further. Section 59 empowers the Registrar to have two remedies which are alternative. He can resort to second remedy if the first remedy was held to be time barred by the Civil Court. The Collector under the fresh Certificate has ample powers to recover the amount under the award as arrears of land revenue.The Act of the Assistant Registrar in dispute is quite legal. The execution proceedings before the Collector are also legal. My findings on Issues Nos.1 and 2 are accordingly.

7 Issues Nos. 3 and 4.

Section 51 of the C.S.Act is not ultra vires.The present suit is not barred under section 51 of C.S.Act as the present dispute does not relate to the winding up or desolution of a Society as contemplated by the above section. My findings on Issues Nos.3 and 4 are accordingly.

8. Issues Nos. 5 and 6.

Plaintiff fails and hence the following order.

Order.

Suit is dismissed. Plaintiff to pay costs of DeftsNos. 1 and 2 in one set and bear his own.

4- 3 -1947.

Sd/- N.V. Ransubhe.
Civil Judge.Sr.Dn.

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D E C R E E.

In the Court of the Civil Judge, Senior Division,

At Bijapur.

Civil Suit No. 166 of 1944.

1. Udapirao Venkatrao Jahagirdar, Brahmin age 58, or Saikundi, Taluka Mungund, now residing at Bijapur, Rameprasad Galli..... Plaintiff.

Vs.

1. The Provincial Government, the Bombay Province.
2. The Dharwar Urban Co-operative Credit Bank Ltd., Dharwar, now under liquidatio by its Liquidator at Dharwar... Defendants.

Claim Rs.

Suit filed on 27th March 1944.

Suit Registered on 3rd April 1944.

(1). This is a suit by the plaintiff for a declaration that the Award obtained by the defendant No. 2 against him in Abbitration Award No. 198 of 1927 under section 54 of the Co-operative Societies Act of 1925 is unexecutable and un-enforceable and the remedies if any available to the defendants under that Award in the matter of recover are all barred. The plaintiff further sues in consequence that the defendants be permanently restrained from proceeding with the execution in any of the modes contemplated under section 59 of the Co-operative Societies Act or under any Law or Rules for the time being in force. The plaintiff also prays for incidental costs required in issuing a notice to the defendants and for such reliefs as the Court may deem fit to award in consideration the unnecessary harassment and anxiety that the plaintiff is now put to by the unauthorised and illegal execution by the defendants.

(2). The plaintiff was a member of the defendant 2's Bank when he was serving as a Teacher in the Karnatak High School at Dharwar prior to 1927. At that time he was one of the mana-ging members of the School which he had started along with others. In order to facilitate the smooth working and with a

charitable view giving a flourishing start to the school, plaintiff contracted debts to the extent of Rs.2000/- with defendant 2 for and on behalf of the School though in his own name. The defendant-Bank referred the matter to Arbitration which finally passed an Award for Rs. 2670-5-0 under section 54 of the Co-oper--ative Societies Act on 13-3-1927 and obtained the certificate of the Registrar in 1928. The Award so obtained by the defendant 2 against the plaintiff became executable under provisions of section 59(1)(a) of the Co-operative Societies Act as directed by the Registrar.

(3). After having so obtained the Award, the defendant-Bank filed a Darkhast in Dharwar First Class Sub Judge's Court in Darkhast No. 728 of 1923 for recovery of the amount due under the Award by sale of the open plot belonging to the plaintiff at Dharwar. In execution of the Award decree the plaintiff's open plot was sole and thereby the defendant 2 recovered an amount of Rs. 450/-. The decree being partly satisfied, the darkhast was disposed of on 30-6-1931.

(4). After the recovery of part of the decretal amount as referred to in para 3 above, the defendant 2 applied for transfer of the decree to the Court of II Class Sub Judge of Bagalkot in C.No. 163 of 1932 under the provisions of section 39 read with order 21 rule 6 of the Code of Civil Procedure as the landed property of the plaintiff was situate in the jurisdiction of th Bagalkot Court. The certificate of transfer of the decree was issued by the Dharwar Court on 13-7-1923 for execution in the Bagalkot Court as prayed for by defendant 2 in C.No. 163 of 1932.

(5) After having so obtained the certificate as referred to in para 4 above, the defendant 2 sued out execution in the Bagalkot Court in Darkhast No. 172 of 1933 for recovery of the amount by sale of the plaintiff's lands of Balkundi village in Hungund Taluka. In further execution of that Darkhast six lands belonging to the joint family of the plaintiff at the time of the Award were sold in auction for an inadequate price. The sale was ultimately set aside by the District Judge of Bijapur on 13-8-1936 in Appeal No. 44 of 1936.

(6). After the sale was so set aside, as referred to in para 5 above, the defendant 2 continued the execution of the decree

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in the same Darkhast for re-sale of the lands. The plaintiff in the mean-while appeared and contended that the Darkhast was time-barred under Article 181 of the Indian Limitation Act. The learned Sub Judge of Bagalkot after hearing both sides gave his decision holding that the Darkhast was time-barred as contended by the plaintiff. This darkhast No. 172 of 1933 filed by the defendant 2 was dismissed on 30-7-1940 and all the remedies x available to the defendant 2 under the award were also barred and consequently the mortgage became extinct.

(7). Pending the execution of the decree as referred to in paras 5 and 6 above the defendant 2- Bank went into liquidation by the end of 1939 or in the beginning of 1940. A Board of Liquidators was duly appointed by the Registrar under section 47 of the Societies Act in No. C.2007 of 27th January 1940. In supersession of the order of the Registrar so appointing the Board of Liquidators, a single liquidator (Mr.S.R.Acharya) was appointed by Order No. C. 2007 dated 29th April 1940 as publish-ed in the Bombay Government Gazettee Part I, page 1563, dated 9-5-1940. Thus the Liquidator took charge of the complete contr-ol and management of all the Societies' business including the execution and recovery work. Even today the defendant Bank is under the control and management of the Liquidator. So the plaintiff now sues the defendant-Bank by its Liquidator, who represents the defendant-Bank.

(8). The plaintiff moved the Assistant Registrar, Dharwar, b an application dated 6-11-1940 praying therein not to allow the liquidator to pursue further execution by issuing a fresh certir-icate and further prayed that he should be heard in the matter before taking any final step. The Assistant Registrar did not hear the plaintiff and issued a certificate exparte on18-2-194 The plaintiff went in appeal to the Registrar,Poona, who rejec-ted the appeal on 18-3-1941 without hearing the plaintiff. Th plaintiff then moved the Government in revision which was also rejected on 12-8-1941 without hearing the plaintiff. It now appears that the Award decree is sent to the Collector of Bija-pur for execution under the Land Revenue Code as an arrears of Land Revenue. The matter is now pending execution in the Court

of the Collector of Bijapur. The Collector ~~xx~~ or his subordinates are~~x~~ likely to proceed with the execution by sale of the right, title and interest of the plaintiff in the lands of Balkundi Village.

(9). The Civil Court ruled out the Darkhast Application as time-barred and the defendant 2 did not prefer an appeal against this decision in Darkhast No. 172 of 1933 .The award under esetuion in the said Darkhast was merged into a decree of a Civil Court and he mortgage thus became extinct and the exeetuion of the said Award decree filed in the Court Court was decided between the parties as time-barred. Thus defendant 1 exhausted completely one of the remedies allowed to the Society under C.S.Act by giving a certificate under section 59(1)(a). This amounted to the final choice of one of the two alternative remedies given to the defendants under the said Act. After chossing the remedy in a Civil Court and pursuing it completely t--to the judgment in the Court and after getting a decision in that proceed--ing against the decree-holder, it does not lie to the defendants to resort to the second remedy in such a way as to defeat the decision of competent Court which is binding on both the parties. The Assistant Registrar, therefore, has no authority to give a certificate to recover the award claim by resorting to the provisions under section59(1)(b) of the said Act. The defendant No. 1 had no right or authority to recover the claim- as alleged to be due as arrears of land revenue relying upon the strength of a certificate which is ultra-vires and without any le~~x~~ and justifiable or equitable right vested in the Assistant Registrar. The recovery proceedings under the circumstances are without jurisdiction and are ultravires and illegal and therefore the whole Act, beginning with the issue of the certificate under section 59(1)(b) to the stage of demand Notice, is illegal, ultravires and without jurisdiction and therefore the said proceedings are void-ab-initio. The liquidator further tries to completely ignore the binding order of the Civil Court. So such an action of the liquidator purporting to be taken under section 50(D) and (F) of the C.S.Act of 1925 is illegal and ultra vires and opposed to principles of justice, equit and good conscience; and the liquidator seeks to take advantage of the section 51 of the C.S.Act of 1925 which is ultra vires of the Legislature as that section 51 encroaches upon the elementary rights of a person to have his rights setteled in a Cour

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law and is against the elementary rules of justice, equity and good conscience. Hence the plaintiff is compelled to file this suit for the necessary declaration and injunction- perpe--tual- as prayed for in para 15 below.

'10) The subordinatesof defendandant 1 are actively helping defendant 2 in the execution of the illegal and ultra--vires orders passed by defendant 2 in executing the awar decree Defendant 1 is therefore added as a party so that there should no remain any objection on the part of defendant 2.

(11). As the plaintiff is residing within the jurisdicti--on of this Court, the property against which execution is now sought is situate within the jurisdiction of this court and the cause of action also has arisen within the jurisdiction of this court. this court has jurisdiction to try this suit.

'12). Cause of action for this suit arose within the jurisdiction of this court in the month of March 1941 when the plaintiff was served with a demand notice for the first time by the Recovery Officer Bagalkot to whom the award had been sent for execution, intimating that the award decree had been so sent to him for execution and calling upon the plaintiff to produce the amount without 15 days of the receipt of the notice(No. R.R.C.802 dated 17-1-1941.)

(13) As this is a suit for declaration that the Award claim cannot be recovered under sec ion 69(1)(b) and all the remedies therefunder are barred with a consequential relief that the defendants be permanently restrained from proceeding with execution, the court fees of Rs.5/- onl. is paid. The value for the purpose of jurisdiction and pleader's fees is the same. As the amount for other reliefs cannot be ascertained for the present.. court-fees will be paid after the amount is setteled by the court.

(14 The notice required by section 80 of the Civil Procedure Code and section 70 of C.S.Act of 1925 has been duly delivered to the Registrar, the defendant Liquidator, and others as required by law.

'16) The plaintiff hereby prays that

(a). it be declared that the claim in award No. 103 of 13-3-1927 cannot be recovered by the defendants through the Collector under section 59(1)(b) of the Bombay Co-operative Societies Act of 1925 or under any other law or rules for the time being in force for the reasons stated above;

(b). a perpetual injunction restraining the continuation of the recovery proceedings by defendant-Bank under section 59(1)(b) of the Bombay Act VII of 1925 or otherwise be granted against the defendants;

(c) that the remedies, if any, available to the defendant Bank under that Arbitration Award in matter of recover of the amount as alleged to be due thereunder be declared to be barred;

(d) that the plaintiff be awarded the costs of this suit and other necessaries and incidental reliefs considering the unnecessary harassment and anxiety that the plaintiff is put to by the unauthorised and illegal action of the defendant-Bank;

(e) that the plaintiff be awarded costs of issuing a notice to the defendants; and

(f) that the plaintiff be allowed the liberty to amend the plaint, if necessary, after the defendants put in their written statement.

This suit coming on this 4th day of March 1947 before N.V.Ranaube. Esquire, Civil Judge, Senior Division, Bijapur, in the presence of Mr. D.R. Desai, pleader for the Plaintiff Rao Sahib S.C.Angadi, Government Pleader, for defendants Nos. 1 and 2, it is ordered and decreed as follows:-

The Suit is dismissed. Plaintiff to pay costs of defendants Nos. 1 and 2 in one set and bear his own.

Bill of Costs.

For Plaintiff.

1. Stamp for Plaint	Rs.	0-8-0
2. For Vakalatnama.		0-10-0
3. For Exs. 17,18,20,25,29, 31,32,34 and 36...		3-3-0.
4. Process Fee		5-0-0-
5. Pleader's fee.....		15- 0-0.
Total..	Rs.	24-10-0.

59 127

For defendants 1 and 2.

1.	Stamps for Vakalatnama	Rs 1-4-0
2.	Do. for exhibits - Nos. 8 to 15 and 22.....	5-3-0
3.	Pleader's fee...	15-0-0.
	Rs.	21-7-0.
	Costs disallowed on exhibits 8 to 15 and 22.	5-3-0.
	Total:- Rs.	16-4-0.

Given under my hand and seal of the Court this 4th day of March 1947.

Examined and found correct.

Sd. B.K.Kop.
Clerk.

Sd/-

Civil Judge, Senior Division,
21-3-47. Bijapur.

Plaintiff's Pleader Sd/- J.R.Desai.

Defts. 1 and 2's pleader:- Sd. A.C.Angadi.
D.G.P.

61

A Suits:
Bijapur.
For a declaration that the award No. 198 dated 13th March-1927, is no longer executable and for an injunction restraining the Defendants from continuing the recovery proceedings under section 59(1)(b) of the Bombay Co-operative Societies Act, 1925.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 3713
Bombay Castle, 16th April 1947.

Read Government ~~kaxak~~ Resolution, Legal Department, No. 836-A, dated the 27th January 1945.

Letter from the District Government Pleader, Bijapur, No. 209, dated the 4th March 1947 - Fowarding an uncertified copy of the judgment and stating that the suit noted in the margin was dismissed by the Civil Judge, Senior Division, Bijapur, on the 4th March 1947.

B In the Court of the First Class Subordinate Judge, Bijapur.

Civil Suit No. 166 of 1944.

Udapirao Venkatrao Jahagirdar .. - - - Plaintiff;
Vs.
1. The Provincial Government of Bombay.
2. The Dharwar Urban Co-operative Credit Bank, Ltd. (under liquidation by its liquidator) } Defendants.

Claim Rs. 5/- B

Letter from the District Government Pleader, Bijapur, No. 301, dated the 26th March 1947 - forwarding undertified copy of the decree.

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,

Sobd. for signature
KBB 16/4
A.S.

Original R. M. Mehta

R.M.Mehta,
Assistant Secretary to Government.

B 1574

To

The Revenue Department,

The Reconstruction Department,

The Commissioner, Southern Division,

The Registrar of Co-operative Societies and Director of Rural Developement, Bombay Province, Poona.

The Collector of Bijapur.

Issued 16/4

10Kc.
15.4.

134

Sold after issue
File in S Bir. 2/45

KBD
17/4

S.A.S RW
17/4

S. Bk 2/45
18.4.47

Received on 19-6-47

Abroad

Dist Govt Pleader

Pojeet

65

Regular Civil Appeal No. 87 of 1947.

In the Court of the District Judge,

At Bijapur.

1. Udapirao Venkatarao Jahagirdar,
Brahmin, 60, Teacher & agriculturist,
of Balkundi taluka Hungund, now
residing at Bijapur..... ... appellant-Plff.

Vs.

1. The Provincial Government of Bombay
the Bombay Province
2. The Dharwar Urban Co-operative Crdit
Bank,Ltd., Dharwar, now under liquidation by
his liquidator at Dharwar..... Respondent-Defts.

Herein the above-named Appellant(Plff) being aggrieved by the judgment and Decree by the Civil Judge Sr.Dn., Bijapur in Civil Suit No.166 of 1944, begs to prefer this appeal on the following among other grounds:-

1. The Judgment and Decree of the lower court are contrary to law, evidence and eqtity.

2. The lower court ought to have given its finding in the affirmative under Issues Nos. 1,2,3,and 5.

3. The lower court has not considered the case of the plfi having regard to the various points urged at the time of arguments.

4. The lower court ought to have given an opportunity to the pleader for the appellant to reply to the ruling shown by the other side long after the arguments had been heard.

5. The lower court ought to have seen that each case is to be decided on the facts of the particular case and so the facts in the ruling in 49 Bom.L.R. 168 are quite different from the facts of the present case.

6. The lower court has failed to see that the question of limitation had been kept open and had not been finally adjudica-ted upon in the ruling in 49 B.L.R. 168 while in the present case there was an express decision of the court that the darkhast was time-barred and that decision being not appealed against was final and conclusive between the parties.

7. The lowr court ought to have seen that no recovery had been made in that case when the proceedings were going on in the Civil Court under section 59(1)(a) of the Co-operative Societies Act and since there was no finding on the bar of limitation, it was held that the alternative remedy was open to the Bank. While in the present case there was partial recovery in the civil court and further there is a conslusive finding that the darkhast is barred by limitation.

8. The lower court has failed to see that the respondent Bank having taken advantage by partial recovery in the civil court under section 59(1)(a) of the C.S.Act, cannot resort to the alternative remedy when the first remedy is either exhausted or not available. The respondent Bank ought not to have been allowed to blow hot and cold in the same breath.

9. The lower court ought to have held that when an advantage is taken by recovery in the civil court, when the matter is pursued to a conclusive judgment and when award is not in existence, it is not open to the Bank to resort to the alternative remedy by obtaining a fresh certi-ficate from the Registrar. It is a nice idea to defeat the the drders of the civil court and to escape the bar of limitation and estoppel; which ought not to have been allowed as it will seriously prejudice the valuable right which has accrued to the plff-appellant.

10. The lower court ought to have held that the ruling in 49 Bombay L.R. 168 is inapplicable to the facts of the present case and the principle laid down in that case supports the case of the plff-appellant

11. The lower court has failed to consider that the respondent Bank having obtained a judgment on one remedy and has recovered partial satisfaction in pursuance of that remedy, it loses the right to proceed on the other remdy as firmly established by various English and Indian cases.

12. The lower court ought to have seen that remedy was also barred under section 48 of the Code of Civil Procedure, as the period of 12 years have elapsed long ago after the passing the award.

67 2e

13. The various findings pointed out by the appellant-plff have not all been considered.

14. The lower court ought to have decreed the suit of the plff as prayed for.

For these reasons it is prayed that the judgment and decree of the lower court be reversed and the suit may be decreed as prayed for in the plaint with costs throughout

Sd/- J-R.Desai.

Bijapur: 8th April 1947. Pleader for the appellantx.

Ahmedabad
District Court Pleader

69

Suits:
Bijapur.
For a declaration that the award No.198 dated 18th March 1927, is no longer executable and for an injunction restraining the Defendants from continuing the recovery proceedings under section 59(1)(b) of the Bombay Co-operative Societies Act, 1925.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 6891
Bombay Castle, 3rd July 1947

Read Government Resolution, Legal Department, No. 3713, dated the 16th April 1947

Letter from the Collector of Bijapur, No. L.A.V. 170, dated the 26th June 1947 - Forwarding a copy of the letter No. 531, dated the 19th June 1947 from the District Government Pleader, Bijapur, together with a copy of notice of appeal and a memorandum of appeal and stating that the plaintiff in the suit noted in the margin has filed Civil Appeal No. 87 of 1947 in the Court of the District Judge, Bijapur against the decision of the Civil Judge, Senior Division Bijapur, dated the 4th March 1947 and requesting sanction to its defence

In the Court of the First Class Subordinate Judge, Bijapur.	
Civil Suit No. 166 of 1944.	
Udapirao Venkatrao Jahangirdar - - - - Plaintiff; Vs.	
1. The Provincial Government of Bombay 2. The Dharwar Urban Co-operative Credit Bank, Ltd. (Under liquidation by its liquidator)	Defendants.
Claim - Rs. 5/-	

RESOLUTION: Sanction is accorded to the defence of the Civil Appeal No. 87 of 1947 in the Court of the District Judge, Bijapur on the lines of the brief accompanying Government Resolution, Legal Department, No. 836-A, dated the 27th January 1945 and the favourable grounds contained in the judgment of the Civil Judge Senior Division, Bijapur dated the 4th March 1947.

By order of the Governor of Bombay,

Subd. for signature Original. R. M. Mehta
R. M. Mehta,
Assistant Secretary to Government.

To A.S. R3/7
The Revenue Department
The Commissioner, Southern Division,
The Registrar of Co-operative Societies and Director Rural Developement, Bombay Province, Poona,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Ec. 2.7.

Subd after issue

File in S. Fbi | 2/45

3B
5/17

A.S
417

2719—5,760—11-44—R(s)*

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ
ಹುಕುಮನಾಮೆಯು
(ಆರ್ಡರ ೪೧, ರೂ. ೩೫)

(ಫಾರ್ಮ ನಂಬರು ೯,
ಪರಿಶಿಷ್ಟ ಗ, ಶೆಡ್ಯೂಲ ೧)

ಹುಕುಮನಾಮೆಯು

— ಬಾಯಿಲೆ — ಇಲ್ಲಿಯ ಅಧಿಕಾರ — ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಬಾಯಿಲೆ — ಇಲ್ಲಿ. ನಿಃ ೧೪

ಕೇಸ್ಸಿಲಾ — ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು ೮೨ ಗಳ್ನೇ ಸೈಕಿ

(೧) ಉತ್ತುತಿರಾಮ ಶೆಟ್ಟಿಚಾರಾಮ ಬೂಂಡಾಲುಬಾಳ್ವ
ಬ್ರಾಹ್ಮಣ ಬಲ್ಲಂ ಮಾನ್ಯೇಕಿ ಚ ಕೇಳಕಿ ವೆಗಾ
ಬಯಲುಕರಿ ಕಾಸ್ತ ಮನಗುಂದ ಅಂಚ ಇರುವವರು ಲಾಬಿ — ಅಪೀಲೆಂಟ (ಮೊದಲನೇ ಲಾಬಿ).

ವಿರುದ್ಧ

(೧) ಕಿಸ್ತಾಪ್ಪಶೆಣೈಯರು ಗಣ್ಪಪ್ಪಶೆಣೈಯರ ಮಗನು
ಕಾಮಾಂಜೆ ಪೋಸ್ಟಾಫೀಸು —
(೨) ಈ ಪ್ರಾರಂಭದ ಆಜ್ಞಾನ ಕೋಟಿಕೆರೆಯ
ಕೆಳಕಿಬ ಸ್ಥಳಕೆ ಅತಿಚಿಕ ದಾರಮಾಡ ಮಾಲಿಗ
ಅಪ್ಪಿಡೆಬವಳ್ಳಿದ್ದ ಅಕರ ಅಪ್ಪಿಡೆಬಾಳು ದಾರಮಾಡ. — ರಸ್ಪಾಂಡಂಟ (ಮೊದಲನೇ ಪ್ರತಿವಾದಿಯರು).

ಬಾಯಿಲೆ — ಇಲ್ಲಿಯ ಕಿಂನ್ಸಿಲಾ ನೇ ಪರ್ಗ ಈ ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೪ ನೇ
ಇಸವಿಯ ಆದೀಲ ನಂಬರು ೧೨೮ ನೇದರಲ್ಲಿ ತಾರೀಖು ೪ ನೇ — ಮಾಯಿ — ತಿಂಗಳ ಸನ್ ೧೯೪೫ ನೇ
ಇಸವಿಯ ಹುಕುಮು ವಾಚಿಸಿದಮೇಲೆ ಸದರೀ ಅಪೀಲು ಬಾಖಲ ಮಾಡೋಣವರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಉತ್ತುತಿರಾಮ — ಅತೀಲಾರಿ — ಇವನು
ತಾರೀಖಿನ ಹುಕುಮು ನಾಮೆಯ — ಮೇಲೆ ಬಾಯಿಲೆ — ಇಲ್ಲಿಯ
ಹಿರಿ ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೫ ನೇ ಕೆಚ್ಚಿಲಾ ತಿಂಗಳಿನ ೨೨ ತಾರೀಖಿನ ದಿವಸ ಈ N.S. Mukhanna
ಅಪ್ಪಣ್ಣಯ್ಯ ಹಾಜರು ಆಗುವುದಕ್ಕೆ ಮುಂದೆ, ಅಪೀಲೆಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲ ಈ K.Ramakrishna Rao
ಅವರ ಸಮುಕ್ಷದಲ್ಲಿಯೂ ಪ್ರತಿವಾದಿಯ ತರ್ಫಿನಿಂದ ವಕೀಲ ಈ K.R.Ramakrishna Bhat ಇವರ ಸಮುಕ್ಷದಲ್ಲಿಯೂ

ಸುನಾವಣೆಯ ಬಗ್ಗೆ ಬಂದವ್ವರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಆಗಾಯುವದರಲ್ಲಿ ಬರುತ್ತದೆಲ್ಲ—

ಕೆಳಕಕೋರ್ಟಿನ ತೀರ್ಮಾನವನ್ನು ಕಾಯಮು
ಮಾಡಿದೆ ಮತ್ತು ಅಪೀಲಾರ್ಥಿಗೆ ಖರ್ಚಿನ ರದ್ದ
ಮಿಡ್ಸಾದ

ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆಗಿ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನು

ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲ ದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲಿಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ	ಎನ್ ರಿಸ್ಪಾಂಡೆಂಟ್.	ರಕಮು. ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟ್ಯಾಂಪು....				೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟ್ಯಾಂಪು....			
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ	–	–	–	೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ			
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....	–		–	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ.			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ		–	–	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ			
೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ		–	–	೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ			
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ....		–	–	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ		–	೦
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	–	–	–	೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟ್ಯಾಂಪು			
				೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ			
ಒಟ್ಟು....				ಒಟ್ಟು....		–	೦

ಈ ಹೊತ್ತು ತಾರೀಖು ೨೨ ತಿಂಗಳು ಸೆಪ್ಟೆಂಬರ್ ಸನ್ ೧೯೪೪ನೇ ಇಸವಿಯ ದಿನ

ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು ಸಮನಾಗಿ ಅದೆ.

Sd/- [illegible]
ಕಾರಕೂನ.

Sd/- N.S. Rao
ಅಡಿಷನಲ್ — ಜಡ್ಜ.
29-9-44.

Sd/- J.R. Desai
ಅಪೀಲಿಂಟ ವಕೀಲ.

Sd/- [illegible]
ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ಪೊಕದಮಿಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವವಾವರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳ ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

"True Copy"

[illegible]

Assistant Government Pleader

75 44

R.A.

In ~~XXXXXXX~~ of the ASSISTANT JUDGE,
~~of~~ BIJAPUR.

Civil ~~Appeal~~ No. 287 ~~of~~ 1947 from ~~Decree~~
~~XXXXXXX~~

~~Civil Suit~~ No. 166 ~~of~~ ~~XXXXXXXXXXXXXXXXXX~~ of the Court of Civil
Senior Division ~~of~~ Bagalkot (Mr. N.V. Ranadive

Mr.J.R.Desai

1. Udapirao Venkatrao Jahagirdar of Bijapur.

~~Appellant~~ original

Mr.K.R.Rao.
" A.C.Angadi.

1. The Province of Bombay.
2. ~~The~~ Dharwar Urban Co-operative Credit Bank Ltd. Dharwar

~~Respondent~~ original-defts.

The ~~action~~ ~~XXXXXXXXXXX~~ out of which this appeal arises, was
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
instituted by the plaintiff-appellant for a declaration that the claim in Award No. 198, dated 1-3-1927, being barred by limitation, could not be recovered by the defendants through the Collector under section ~~52~~ 59(1)(b) of the Bombay Co-operative Societies Act, 1925, or under any other law or rules for the time being in force, and for a perpetual injunction restraining the defendant No. 2 bank from continuing the recovery proceedings under the said section 59 (1)(b) or otherwi

alleging that the plaintiff was a member of the defendant No. 2 bank when he was serving as a teacher in the Karnatak High School at Dharwar prior to 1927, that at that time he was one of the managing members of the School, which he had started along with others, that in order to facilitate the smooth working and imbued with the charitable view of giving a flourishing start to the school, the plaintiff contracted debts to the extent of Rs. 2000 with the defendant No. 2 bank for and on behalf of the school in his own name, that the defendant No. 2 bank referred the matter to arbitration, which resulted in an award for Rs. 2670-5-0 under section 54 of the Bombay Co-operative Societies Act on 13-2-1927, that subsequently a certificate of the Registrar was obtained in 1928 with the result that the award became executable under section 59(1)(a) of the Act, that the award was put into execution by Darkhast No. 728 of 1923 in the Court of the First Class Subordinate Judge at Dharwar for recovery of the amount due by sale of the open xx plot belonging to the plaintiff at Dharwar, that in execution of the award the plaintiff's open plot was sold and a sum of Rs 50 recovered, that the award being partly satisfied the darkhast was disposed of on 30-5-1931, that thereafter the defendant No. 2 bank applied for transfer of the decree to the Court of the Second Class Subordinate Judge at Bagalkot in ~~O Ner 163 of 1932~~ under section 39, read with Order XXI rule 6, of the Code of Civil Procedure, as the landed property of the plaintiff was situated within the jurisdiction of the Bagalkot Court, that the certificate of transfer of the award was issued by the Dharwar Court on 13-7-1932 for execution in the Bagalkot Court as prayed for by the defendant No. 2 bank in C No. 163 of 1932, that the defendant No. 2 bank sued out execution of the award in the Bagalkot Court in Darkhast No. 172 of 1933 for recovery of the amount by sale of the plaintiff's lands situated in Nalkundi village in Gungund Taluka, that in that Darkhast 6 lands belonging to the joint family of the plaintiff at the time of the award were sold in auction for an inadequate price, that the

auction-sale was ultimately set aside by the District Court on 13-3-1939 in Appeal No. 44 of 1938, that after the sale was set aside the defendant No. 2 bank continued the execution of the award by the same method for re-sale of the lands, that in the mean-while the plaintiff appeared and contended that the darkhast was time-barred under article 181 of the Indian Limitation Act, that the learned Subordinate Judge upheld his contention and dismissed the darkhast on 30-7-1940, that thus all the remedies available to the defendant No. 2 bank under the award being barred, the mortgage, which it held, became extinct that during the pendency of the execution of the award the defendant No. 2 bank went into liquidation by the end of 1939 or in the beginning of 1940, that a Board of Liquidators was duly appointed by the Registrar under section 47 of the Bombay Co-operative Societies Act in No. 2 C 2007 of 27th January, 194 that in pursuance of the order of the Registrar a single liquidator Mr. [illegible] Acharya was appointed in No. C 2007, dated 29th April, 1940, which was published in the Bombay Government Gazette, Part I, page 1563, date 9th May, 1940, that the liquidator took up the complete control and management of all the business of the society, including the execution and recovery work, that even at the date of the suit the defendant No. 2 bank was under the control and management of the liquidator, that the plaintiff moved the Assistant Registrar, Dharwar, by an application, dated 5-11-1940, praying therein not to allow the liquidator to proceed execution by issuing a fresh certificate, but the Assistant Registrar did not hear the plaintiff and issued a certificate ex parte on 13-2-1940, that the plaintiff went in appeal to the Registrar, who rejected the appeal on 12-3-1941, without hearing the plaintiff, that the plaintiff then moved the Government in revision, which was also rejected on 12-9-1941, that the award was sent to the Collector of Bijapur for execution under the Land Revenue Code to realise the amount as arrears of land revenue by sale of the plff's lands in Kalkeri village, that one of the remedies allo-

the defendant No. 2 Bank having completely exhausted by giving a certificate under section 59 (1 (a) of the Bombay Co-operative Societies, it amounted to an election of one of the two alternative remedies given to the defendant No. 2 Bank under the said Act, that after choosing that remedy in a Civil Court and carrying it completely upto judgment and after getting a decision in that proceeding, the second remedy could not be resorted to by the defts in such a way as to defeat the decision of a competent Court, which was binding on both the parties, that the Assistant Registrar had no authority to give a certificat to recover the amount under section 59 (3)(c) of the Act, that his act in giving it is without jurisdiction, illega and ultra vires, that, therefore, the whole act, ~~x~~ beginn with the issue of the certificate under section 59 (1)(b) to the stage of the demand notice, was without jurisdiction, illegal and ultra vires, that the liquidator could not make further attempts to recover the amount by completely ignoring the order of the Civil Court, that his action, which purports to be under section 59(3) and (f) of the Act, was illegal and ultra vires and opposed to the principles of justice, equity and good conscience, that he should so take advantage of the recent section 91 of the Act, which itself was ultra vires of the legislature, as it encroached upon the elementary rights of a person to have his rights settled in a Court of law and was against the elementary rules of justice, equity and good conscience, that the cause of action for the suit arose in March, 1941, when the plaintiff was served with a demand-notice for the first time by the Special Recovery Officer, Nagaloti, to whom the award was sent for execution, calling upon the plaintiff to produce the amount within 15 days of the receipt of the notice, and that under the circumstances the plaintiff was compelled to bring the suit.

The defendants Nos. 1 and 2 put in a common

defence and contended, by their written statement (Exh. 18) that the date of the fresh certificate issued by the Assistant Registrar was 18-12-1940 and not 14-2-1940 as alleged in the plaint para 6 of the plaint, that the suit was barred under section 51 of the Bombay Co-operative Societies Act for want of leave of the Registrar, that the plaintiff contracted the loan, not on behalf of the Karnatak High School, but for his own purpose, that the defendant No. 2 bank was entitled to either or both of the remedies provided in section 59(1)(b) of the Act and was not precluded from executing the award by the Revenue authorities on account of the earlier execution proceedings in the Civil Court, that the dismissal of Darkhast No. 172 of 1933 on 30-7-1940 on the ground of limitation did not extinguish the defendant No. 2 bank's right to recover the amount of the award by executing it before the revenue authorities, that the proceedings before the Collector were lawful, that section 59 of the Act is not ultra virus as alleged and that the plaintiff was not entitled to any relief.

3. Upon these pleadings several issues were raised v. Exh. 19 and the learned Civil Judge, Senior Division, Bijapur, who heard the suit, came to the conclusion that the dismissal of Darkhast No. 172 of 1933 of the Bagalkot Court on 30-7-1940 on the ground of limitation did not extinguish the defendant No. 2 bank's right to recover the amount of the award by executing it before the revenue authorities as provided under section 59 (1) (b) of the Bombay Co-operative Societies Act, 1925, that the proceedings pending before the revenue authorit were not illegal, that section 51 of the Act was not ultra vir of the legislature, that the suit was not barred under section 51 of the Bombay Co-operative Societies Act and that the plaintiff was not entitled to the declaration and injunction sought, and dismissed the suit.

4. Dis-satisfied with this result, the plaintiff ha come in appeal, and the following points are pressed in appeal

1. Whether the defendant No. 2 bank could proceed under section 59(1)(b) of the Bombay Co-operative Societies Act, 1925, when it elected to proceed under section 59 (1) (a) of the act and recovered part of the amount through Court and Darkhast No. 172 of 1933 was held to be time-barred;

2. Whether the suit is barred under section 51 of the Bombay Co-operative Societies Act ?

3. My findings on both the points are in the affirmative for the following

Reasons :-

6. The essential facts leading upto the suit are few and simple and may be briefly stated thus: The plaintiff who was serving as a teacher in the Karnatak High School at Dharwar, had borrowed Rs. 2000 on 12-1-1923 from the defendant No. 2 bank with the surety-ship of Narayanacharya Anantacharya and Bhimaji Shesho. On default of payment of the amount due by them, the defendant No. 2 bank obtained an award against them under section 54 of the Bombay Co-operative Societies Act, 1925, on 13-3-1927, in Arbitration Case No. 198 of 1927. The bank obtained a certificate under section 59 (1)(a) of the said Act from the Assistant Registrar to execute the award in the Court of the then First Class Subordinate Judge at Dharwar. After having obtained the certificate, it filed Darkhast No. 728 of 1928 on 7-9-1928 and sought to recover the amount by sale of the plaintiff's plot at Dharwar. In that darkhast the plot was sold and an amount of Rs. 450 recovered and the darkhast was disposed of on 30-6-1931. On 1-6-1932, the defendant No. 2 bank filed Q Application No. 163 of 1932 in the Dharwar Subordinate Judge's Court to transfer the award to the Court of the Second Class Subordinate Judge at Bagalkot for execution under section 39 of the Code of Civil Procedure and issued a certificate under Order XXI rule 6 of that Code. The certificate was issued on 13-7-1932. Thereafter the defendant No. 2 bank filed Darkhast No. 172 of 1933 in the Bagalkot Court on [illegible]-3-1933 and

sought to realise an amount of Rs. 3888-5-0 by sale of the plaintiff's lands, which were mortgaged. During the pendency of the execution proceedings before the Collector for sale of the lands, the plaintiff made an application to the Court contending inter alia that it had no jurisdiction to entertain the darkhast and that the darkhast was barred by limitation. The learned Subordinate Judge held, on the authority of the decisions in Raghavendra v. Industrial Bank, Guledgud (36 Bombay Law Reporter 927) and Hubli Urban Co-operative Society v. Gurusa Baburao Bengeri (Letters Patent Appeal No. 5 of 1933, in Second Appeal No. 301 of 1931), that the darkhast No. 729 of 1928, filed by the defendant No. 2 bank in the Court of the First Class Subordinate Judge at Dharwar, could not operate as a step-in-aid of execution under article 182(5) of the Indian Limitation Act, that under article 181 of the said Act the defendant No. 2 bank's right to execute the decree arose when the certificate was issued to it by the Assistant Registrar of Co-operative Societies on 7-9-1928 and that the darkhast before him not having been filed within three years from that date and the defendant No. 2 not having applied for a fresh certificate under section 59(1)(a) of the Bombay Co-operative Societies Act, the darkhast was barred by time, and dismissed the darkhast on 30-7-1940. Pending the execution of the award in the Bagalkot Court, the defendant No. 2 bank went into liquidation and one Mr. S.R.Acharya was appointed as a liquidator on 29-4-1940. There is no dispute that this liquidator assumed complete control and management of the society's business, including the execution and recovery work. On 18-12-1940, he obtained a certificate under section 59(1)(b) of the Co-operative Societies Act from the Assistant Registrar to recover the amount from the plaintiff and two others (vide Exh. 28). The certificate was forwarded to the Collector of Bijapur, who, in turn, entrusted the recovery work to the Special Recovery Officer, Bagalkot, by his order, dated 31-12-1940. The plaintiff seems to have approached the

Registrar and the Government against the decree of the Assistant Registrar, was to no purpose. It was then that the plaintiff instituted the suit on 27-3-1944 for an injunction against the bank restraining it from executing the Award, No. 1vo of 1927, through the revenue authorities after getting a declaration that the said award was inexecutable and unenforceable and the remedies, if any, available to the defendant No. 2 bank under the award in the matter of recovery were all barre

7. The principal contention of the plaintiff is that when once the competent Court had declared that the execution taken out by the defendant No. 2 bank was barred by limitation, the Assistant Registrar had no right to execute a time-barred award in the revenue court. The defendants retort that under section 59(1) of the Bombay Co-operative Societies Act it was open to the defendant No. 2 bank to avail of either of the two remedies provided by that section and that it was not precluded from executing the award before the revenue authorities on account of the earlier execution proceedings in the Civil Courts. Following the decision in Nuppanna Kalkappa Humbi v. Shree Gajanan Urban Co-operative Bank Limited (49 Bombay Law Reporter 168), the lower Court held that the defendant No. 2 bank could resort to the second remedy if the first remedy was held to be time-barred by the Civil Court, and dismissed the suit.

8. In this appeal, two points fall to be considered, viz., (1) whether an award made under section 54 of the Bombay Co-operative Societies Act, 1925, becomes infructuous or unenforceable when the Civil Court holds that the remedy of the party under section 59(1)(a) of the Act is barred by limitation, and (2) whether the suit is barred bad for want of leave of the Registrar under section 51 of the said Act. Both these points will have to be answered against the plaintiff.

9. Apart from the authorities, to which I shall presently refer, it will appear from section 60(1) of the

Act that the use of the word 'or' in between the clauses (a) and (b) is very significant. It shows that it is left to the option of the party in whose favour the order referred to in sub-section 1 is passed, to pursue both or any of the two remedies. There is nothing in the section from which it could be gathered that if the party concerned avails of one of the two remedies, he is for ever debarred from availing of the other remedy. If the intention of the Legislature were that the party choosing one remedy could not resort to the other remedy, an express provision to that effect would have been made in the section itself. In short, if a party chooses the remedy provided in clause (a), he is not precluded from having recourse to the alternative remedy provided in clause (b) of section 59 (1) of the Bombay Co-operative Societies Act.

10. Support is lent to this view by the decision in Huppanna v. Shree Gajanan Urban Co-operative Bank Limited (49 Bombay Law Reporter 168). The facts of that case are almost on all fours with those in the present case with this difference that in that case there was not question of part satisfaction and were no liquidation proceedings during the pendency of the execution proceedings. Briefly stated, the facts in that case were that the Shree Gajanan Urban Co-operation Bank obtained an award against one Sidlingappa and others (plaintiffs) on 1-9-1929 under section 54 of the Bombay Co-operative Societies Act. Under section 59 of the said Act, the bank obtained a certificate from the Registrar to execute the award in the Court of the Subordinate Judge at Haveri. Thereafter it filed Darkhast No. 404 of 1930 in that Court for Rs. 1000 against Sidlingappa and the plaintiffs. The darkhast was disposed of on April 10, 1930. Then, in 1932 it filed a second darkhast, No. 1267 of 1932, against the judgment-debtors, and this darkhast was disposed of on July 11, 1933. The bank then made a third attempt by instituting a third darkhast, No. 39 of 1933, and this darkhast was disposed of on April 10, 1934 when it made a fourth attempt by instituting Darkhast No. 193 of 1937

on 18-3-1937. The executing Court held that article 181 of the Limitation Act applied to such a darkhast and the darkhast was, therefore, barred by limitation. The bank went in appeal against the decision to the District Court of Dharwar. When the appeal came up for hearing, a pursis was filed by the bank-appellant that the appeal might be dismissed provided the question of limitation was kept open. The judgment-debtors also agreed to this proposal, and thereupon the appeal was dismissed. After these proceedings in the Subordinate Judge's Court at Haveri, the bank obtained from the Registrar a certificate under section 59(1)(b) of the Bombay Co-operative Societies Act and applied to the Collector for recovery of their debts as arrears of land revenue. Thereupon the plaintiffs filed a suit for an injunction to restrain the bank from executing the award through the revenue authorities on a declaration that the said award was time-barred and that the bank was not entitled to recover anything from the plaintiffs on the strength of that award. The trial Judge decreed the plaintiffs' suit, but in appeal it was reversed on the ground that the trial ~~Court~~ Judge was wrong in holding the view that the decree was barred by limitation in Darkhast No. 193 of 1937. The appellate Judge pointed out that in the appeal by the Bank to the District Court the question of limitation had been specifically kept open. He was further of opinion that there was nothing in the Bombay Co-operative Societies Act to prevent the Registrar from issuing a fresh certificate under section 59 (1)(b) so as to enable the party concerned to go before the Collector and to recover the amount due to it as if they were arrears of land revenue. He also pointed out that the mere fact that the bank had chosen to pursue the remedy in the Subordinate Judge's Court did not preclude it from having recourse to the alternative remedy, which was provided under section 59(1)(b) of the Act. The plaintiff went in appeal to the High Court against the order of the first

appellate court. Their Lordships came to the conclusion that the holder of an award made under section 54 of the Bombay Co-operative Societies Act was not prevented from obtaining a certificate from the Registrar and to proceed to execute the award by an application to the Collector to recover the amounts due as if they were arrears of land revenue, that the award did not become infructuous merely because the Civil Court held that the remedy of the party under section 59(1)(a) of the Act was barred by limitation and that it was open to the party, under the alternative remedy given to it, to apply to the Collector after obtaining a certificate from the Registrar to recover the amount as arrears of land revenue.

11. This decision, to my mind, must govern the present case. It is to be noted that the decision of the learned Subordinate Judge at Nagaland in Darkhast No. 172 of 1938 that it was barred by limitation under article 181 of the Indian Limitation Act was clearly wrong. It purported to follow two decisions of our High Court, which were admittedly not decisive on the point. This will be clear from the decision in Bhimsen Hanmant v. The Urban Bank, Muddebihal (43 Bombay Law Reporter 160), in which it has been held that under section 59(1)(a) of the Act, as it stood before its amendment by Act XVI of 1943, the award sought to be executed under it must be treated as a decree of a Civil Court within the meaning of article 182 of the Indian Limitation Act and that the amendment made in section 59(1)(a) has retrospective effect. However, the propriety or otherwise of the decision of the learned Subordinate Judge in Darkhast No. 172 of 1938 need not be pressed further, since a Court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party has a remedy prescribed by law for setting the matters right, and if that course is not taken, the decision, however wrong, cannot be disturbed. Though, by reason of the decision in Darkhast No. 172 of 1938, the remedy available to the defendant No. 2 bank under section 59(1)(a) was barred by limitation, the award did not

become infructuous or inoperative so as to preclude the defendant No. 2 Bank from having recourse to the alternative remedy provided by section 59(1)(a) of the Act. At first sight it may appear rather strange that when once a competent court, having jurisdiction to entertain an execution petition based on an award, has declared that it is time-barred, the aggrieved party should be allowed to resort to the alternative remedy. But when the law itself provided an alternative remedy, the party availing of it will undoubtedly be within his rights and his action cannot be deemed to be improper or illegal. Bachchyakaha J., who delivered the judgment in the case of Muppanna v. Shree Ajanan Urban Co-operative Bank, observes at pages 170-171: "Even assuming that the point (that darkhast was time-barred) was decided in that darkhast, that decision was, in our opinion, clearly wrong. In Thimsen v. Urban Bank, Muddebihal (40 Bombay Law Reporter 160), which we have decided today, we have taken the view that the proper article to apply is article 182 and not article 181. In that view, the execution of the decree was not barred when the Registrar issued the certificate under section 59(1)(a). Moreover, as pointed out by Mr. Coyajee for the respondent-bank, merely because the Civil Court held that the remedy of the party under section 59(1)(a) was barred, it does not necessarily follow that the claim ipso facto lapses. It is a well-established rule of law that in cases, which are governed by section 28, limitation merely bars the remedy but does not extinguish the title. Even assuming that the civil Courts are right in holding that the remedy of the parties is barred in the civil Court by reason of the application of article 181 of the Limitation Act, it does not follow that the award becomes infructuous; and if it was open to the party, under the alternative remedy given to it, to apply to the Collector for a certificate from the Registrar to recover the amount as arrears of land revenue, it does not appear that that remedy would not be available to the party." His Lordship then quotes with approval the

[redacted]vations of Garth C.J. in Mahomed Jonesin v. Kohil Singh (Calcutta 91), which are to the following effect: "It is [redacted]nous to suppose that because the right to take out executi[redacted] decree is barred by limitation the decree itself has ceased to subsist; the decree remains and will ever remain, in full force, as an adjudication of the rights of the parties." It is conceded before me that so far as the execution of the award by the revenue authorities is concerned, there is no bar limitation. In that case it will be open to the defendant Ba[redacted]bank to execute the award before the revenue authorities.

12. The learned pleader for the appellant, however, draws my attention to certain observations made by Ajadhyaksha J. in Nanganna's case and argues that the holder of an award under section 54, who obtains satisfaction of his claim under section 59(1)(a) of the Act, is precluded from resorting to the alternative remedy under section 59(1)(b) of the Act. It is to be borne in mind that in that case the question whether in the event of partial or complete satisfaction the bank concerned was precluded from resorting to the alternative remedy provided in section 59(1)(b) did not fall to be considered. Therefore, whatever observations have been made by His Lordship touching that question will have to be deemed to be mere obiter dicta. However in my opinion the observations of His Lordship, which have been pointed out to me do not tend to support the plaintiff's case. In that case His Lordship's attention was drawn to the decision in Hanmant Dhimrao v. Gurusao Bwatirao (44 Bombay Law Reporter 880) and it was argued on general principles that the plaintiff having elected to pursue one remedy was precluded from resorting to the other remedy. But His Lordship distinguished that case and observed that the learned Chief Justice, who decided Hanmant's case, was obviously dealing with a case where a person had two inconsistent rights and having elected to enforce one right he could not thereafter turn round and seek to enforce the other right. After noting the distinction between inconsistent rights and alternative remedies, His Lordship observed that the decision in Hanmant's case would not apply to the case under

consideration. His Lordship then referred to certain other observations of the High Justice in that case on which reliance was placed by the advocate for the appellants and pointed out that they were not helpful to the party relying on them. His Lordship traced the history of those observations by referring to certain English decisions and concluded by saying: "Having regard to those dicta of the learned Judges, the observation of Beaumount J. in Hanmant Dhiraso v. Gururao Dwmirao (page 889) that 'in general it is only on obtaining judgment on one remedy that the plaintiff loses the right to proceed on the other remedy' must be understood to mean that the proceedings up to judgment on the first remedy also imply that the plaintiff must have received satisfaction in pursuance of that remedy. If therefore the holder of an award obtains satisfaction after resorting to one remedy provided by law under section 69(1)(a) of the Bombay Co-operative Societies Act, then he would be precluded from resorting to the second remedy to which he would have had recourse under section 69(1)(b) of the Bombay Co-operative Societies Act". In the first place, as I have stated above, these observations of His Lordship should be treated as obiter dicta. Further, the judgment and satisfaction, to which a reference has been made while discussing the English case at page 173, does not contemplate partial satisfaction, as here, but complete satisfaction. It cannot be gainsaid that when satisfaction is obtained under one remedy, the party is precluded from having recourse to the alternative remedy. But supposing, if, out of a claim of Rs. 4000, a bank is able to realise only Rs. 2000 by resorting to the remedy provided in section 69(1)(a), does it amount to judgment and satisfaction so as to preclude the bank from having recourse to the alternative remedy under section 69(1)(b. I think not. The expression "judgment and satisfaction" should not be construed in such a way as to render inoperative the plain provisions of section 69(1). On a careful perusal of the judgment of His Lordship, I am of opinion that His Lordship did not mean to lay down that partial satisfaction of an award

by having recourse to the remedy provided under section 59(1)(a) precludes a party from realising the balance by resorting to the alternative remedy provided in section 59(1)(b) of the Act. If it were otherwise, the Legislature would have made a xxxx clear provision in that behalf in the Act. In the absence of any such provision, we will have to take the section as it is and construe it. In the circumstance of the case, I would hold that the defendant No. 2 bank is not precluded from executing the award under section 59(1)(b) through the revenue authority.

13. This brings us to point No. 2, which relates to the bar contemplated by section 51 of the Bombay Co-operative Societies Act. The section reads thus: "Save in so far as is expressly provided in this Act no civil court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act and when a winding up order has been made no suit or other legal proceeding shall lie or be proceeded with against the society except by leave of the Registrar and subject to such terms as he may impose". From the allegations in the plaint it is quite clear that at the end of 1939 or in the beginning of 1940 a winding up order was made by the Registrar and a liquidator was appointed under section 47 of the Act for the purpose of winding up the bank. The liquidator's powers and duties are defined in section 50. Under clause (d) and (f) of that section he has power to recover debts due from the members of the society and to issue requisition under section 59 upon the Collector for the recovery as arrears of land revenue of any sum ordered by him to be recovered as due from members or as a contribution to the assets of the society or to the cost of the liquidation. It is indisputable that these duties relate to the winding up proceedings and, therefore, the civil Court would be barred from taking cognizance of the same under the first part of section 51 of the Bombay Co-operative Societies Act.

14. Assuming for a moment that the civil Court can

take cognizance of the matter on the supposition that it is not connected with the winding up of the defendant No. 2 bank, even then, under the latter part of section 51 of the Bombay Co-operative Societies Act, the suit would be bad for want of leave of the Registrar, as there is already winding up order passed by the Registrar. In either view, the suit would be barred under section 51 of the Act.

15. The result is the appeal fails and must be dismissed.

16. Order.

The decree of the lower Court is confirmed and the appeal is dismissed with costs.

Sd/- N.S. Mehrani
Assistant Judge.

September 27, 1943.

True Copy

Dakshin Gora Pleader
Pojar

Sd/-

Suits.

Bijapur.

For a declaration that the award No. 198 dated 13th March 1927, is no longer executable and for an injunction restraining the Defendants from continuing the recovery proceedings under sectio 59(1)(b) of the Bombay Co-operative Societies Act. 1925.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 11246
Bombay Castle, 24th November 1948.

Read Government Resolution, Legal Department, No. 6841, dated the 3rd July 1947.

In the Court of the First Class Subordinate Judge, Bijapur. Civil Suit No. 166 of 1944. Udapirao Venkatrao Jahagirdar.... Plaintiff. vs. 1.The Provincial Government of Bombay. 2.The Dharwar Urban Co-operative Credit Bank,Ltd. (Under liquidation by its liquidator). Defendants. Claim - Rs. 5/-	Letter from the District Government Pleader, Bijapur, No. 807 of 1948, dated the 15th October 1948, forwarding uncertified copies of the judgment and decree in appeal No. 87 of 1947 which was decided by the Assistant Judge of Bijapur on the 27th September 1948 when the following order was passed:

"The decree of the lower Court is confirmed and the appeal is dismissed with costs."

RESOLUTION.- The result of the appeal should be recorded.

By order of the Governor of Bombay,

Original

K. J. Pathare

Addl. Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, S.D.
The Collector of Bijapur.
The Registrar of Co-operative Societies & Director of Rural & Dev. Govt. Bombay

G.C.P.J. (J) J 164—500—8-46
G.R., J.D., No. 4398 dated 3-7-16

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[Spl—H.C. A.S. Civil] 20 e

IN HIS MAJESTY'S HIGH COURT OF JUDICATURE, APPELLATE SIDE, BOMBAY

APPEAL No. 1258 OF 1948 FROM Appellate DECREE

Udapirao Venkatrao Jahagirdar & Bijapur (Orig. Plff.) — Appellant

versus

1. The Province of Bombay & Anr. (Orig. Defts.) — Respondent

Claim—Rupees 5/- for all

No. 282 OF 1949

From

THE DEPUTY REGISTRAR,
High Court, Appellate Side, Bombay;

To

The Secretary, Legal Dept., Secretariat, the Govt. of Bombay.

Bombay, 4 January 1949.

Sir,

The Appellant abovenamed having presented an appeal from the decision of the Assistant Judge of Bijapur in Appeal No. 87 of 1947, and the same having been registered in this Court, and this Court having on 17-12- 1948, ordered notice to issue, I have the honour to inform you that the hearing of the said appeal will take place on the 14th day of March 1949, or on any subsequent day which to this Court may seem convenient; and that if no appearance is made on your behalf either in person or by a pleader of this Court or agent duly authorized and instructed, it will be heard and determined in your absence.

To be served on the Govt. Pleader

I have the honour to be,
Sir,
Your most obedient servant,

R. A. Mahale
for Deputy Registrar.

Suits.

Bijapur.

For a declaration that the award No. 198 dated 13th March 1927, is no longer executable and for an injunction restraining the Defendants from continuing the recovery proceedings under section 59(1)(b) of the Bombay Co-operative Societies Act, 1925.

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 6281
Bombay Castle, 6th June 1949

Read Government Resolution, Legal Department No.11246 dated 29th November 1948. Endorsement No. 561 dated 1-2-1949 from the Government Pleader, High Court, Bombay forwarding copies of High Court's notice served on him in connection with S.A. No. 1258 of 1948 from Appeal No. 87 of 1947 in suit noted in the margin and letter No. 560 dated 1-2-1949 addressed to the Collector of Bijapur for information.

In the Court of the First Class Subordinate Judge, Bijapur.

Civil Suit No. 166 of 1944.

Udapirao Venkatrao Jahagirdar ... Plaintiff.

Vs.

1. The Provincial Government of Bombay.
2. The Dharwar Urban Co operative Credit Bank Ltd. (Under liquidation by its liquidator).) Defendants.

Claim - Rs.5/-

Letter No. L.A.W.-170 dated 15-2-1949 from the Collector of Bijapur forwarding a copy of District Government Pleader's report with reference to the letter of the Government Pleader, High Court, Bombay ~~letter~~ No.560 dated 1-2-1949 and requesting sanction to the defence of the S.A. No.1258 of 1948 in the High Court of Judicature, Appellate side, Bombay.

RESOLUTION: Sanction~~ee~~ as accorded to the defence of the S.A. No.1258 of 1948 in the High Court of Judicature, Appellate Side, Bombay, on the lines of the brief accompanying Government Resolution, Legal Department No.836-A dated the 27th January 1945 and the favourable grounds contained in the judgments of the Civil Judge, Senior Division Bijapur dated 4th March 1947

and ....

and the Assistant Judge of Bijapur dated 27th September 1948.

By order of the Governor of Bombay,

Original R M Mehta

R. M. Mehta.

Assistant Secretary to Government

Submitted for signature
SB
4/6. AS.
R.M.L

To

The Revenue Department,
The Commissioner, S.D.
The Collector of Bijapur.
The Registrar of Co-operative Societies and Rural Development, Bombay Province, Pooha.
The Government Pleader, High Court, Bombay (with 2 copies of the brief accompanying Government Resolution, Legal Department No.836 A dated 27th January 1945)

cup/ 3.6. Issued
3.6 - esp 6/6

Add after case.

File in S Bij 2/45.

9/6

-18-

IN HIS MAJESTY'S HIGH COURT OF JUDICATURE AT BOMBAY.

Civil Application No.61 of 1949.

in

Second Appeal No. 1258 of 1948.

Udapirao Venkatrao Jahagirdar.....Applicant.

(Orig.Plff).

Versus.

1. Province of Bombay.

2. The Dharwar Urban Co-operative Credit Bank, Ltd., Dharwar. .....Opponents.

(Orig. Defts).

Claim Rs.5/- for jurisdiction

The humble application of the applicant above-named

Respectfully showeth:-

1. That the Petitioner has filed Second Appeal No. 1258 of 1948 in this Hon'ble Court and the same is admitted.

II. That the Original suit was filed by the Petitioner for a declaration that the claim in award No. 198 of dated 13-8-1927 being barred by limitation could not be recovered by the Opponents and for a permanent injunction against the Opponent No.2 restraining him from the continuing the recovery proceedings.That the said suit was dismissed.The appeal preferred therefrom to the District Court of Bijapur in Civil Appeal No. 87 of 1947 was also dismissed.

III. That the Petitioner under the circumstances humbly approaches Your Lordships with a prayer that Your Lordship be pleased to issue an injunction restraining the Opponents from the continuation of the Recovery proceedings, pending the disposal of this S.A.No.1258 of 1948 on the following among other grounds:-

(1). That the Petitioner will sustain irreparable loss if the proceedings are continued.

(2). That the suit being a suit for a declaration and an injunction, it is just and expedient to issue a temporary injunction as prayed for.

And for this act of kindness, the applicant as in duty shall ever pray.

Sd/- T.S. Jahagirdar.
Bombay 18-1-1949. Advocate for Applicant.

RJS/-
27-6-49.

103 1944

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

C.A. No. of 1948 for temporary Injunction i

S.A. No. of 1948.

1. Udapirao Venkatrao Jahagirdar .....Petitioner-Appell
(Orig: Plff).

Vs.

1. Province of Bombay.
2. The Dharwar Urban Co-operative Credit Bank, Ltd., Dharwar. } Opponents-Respondents (Orig: Defts'

Claim: Rs.5/- for all purposes.

The humble petition of the above mentioned petitione most respectfully showeth:-

That the petitioner has filed a second Appeal from the decree in C.A. No. 87/1947 of the Court of the Assistant Judge, Bijapur, and the same is pending in the High Court.

That the original suit was filed for a declaration that the claim in Award No. 198 dated 18.8.1927 being barred by limitation could not be recovered by the opponents throug the Collector under S. 59(i)(b) of the Bombay Coperative Societies Act or under any other law and for a pepetual injunction restraining the Opponent No.2 from continuing the recovery proceedings under the said section or otherwise.

That the suit being dismissed by the trial Court, there was an appeal where the decree of the trial Court was confirmed.

The petitioner, therefore, prays that this Honourable Court be pleased to issue a temporary injunction against the opponents restraining the continuation of the recover

of the recovery proceedings by the opponent-Bank under S. 59(i)(b) of the Bombay Act VII of 1925 of otherwise pending the disposal of the present second appeal on the following among other grounds:-

1 That the petitioner will sustain irreparable loss if the recovery proceedings mentioned above are allowed to be continued pending the disposal of the second appeal.

2. That the suit being a suit for a declaration and perpetual injunction, it is just and expedient to issue a temporary injunction pending the appeal.

3. That such an order is absolutely necessary in the ends of justice under the peculiar circumstances o the present case.

And for this act of kindness, the petitioner as in duty bound shall ever pray.

Advocate, High Court,
Bombay.

(Usual affirmation clause follows)

RJS/-
27-6-49

107 A/14

In His Majesty's High Court of Judicature, Appellate Side, Bombay.

Civil Application No.61 of 1949.

In
Appeal No.258 of 1948.

Appeal No.87-1947 of the District Court of Bijapur.
Suit No. 166 of 1944. Civil Senior Judge's Court at Bijapur

Udapirao Venkatrao Jahagirdar. Petitioner
Represented by
Mr.T.S.Jahagirdar,
Advocate.

Vs.

1. The Province of Bombay.
2. The Dharwar Urban Co-operative Credit Bank Ltd., Dharwar. } Opponents.

To

The Province of Bombay, to be served on the Collector of Bijapur.

Greeting.

Whereas the above-named Petitionerhas presented to Us in Our High Court of Judicature at Bombay, a Petition prarying that you may be restrained from the continuation of the Recovery proceedings pending the decision of the said Appeal.

And whereas upon hearing the Advocate for the Petitioner the Court passes the following order

"Rule and interim injunction to opponents on usual terms."

It is hereby accordingly ordered that you, your servants and your agents, restrained from continuation of recovery proceedings, pending the final disposal of the said Second Appeal by this Court, unless you show cause, as aforesaid, within one month from the date of service hereof why, you your servants and your agents should not be so restrained.

Witness M.C.Chaglas, Esquire, Chief Justice at Bombay aforesaid, this 25th day of January , one thousand nine hundred and fort-nine.

By the Court,

eal

Sd. V.R.Gadkari, 31-1.
Assistant Registrar.

The 31st day of January 1949.

Rs.as.ps

K. 408. Sectioner:- Mr.D.T.Patwardhan 0--2--0 Fa.1. ~~705~~ 109
Examiner:- Mr. A.U.Patel 0--0--0
Reader:- Mr.K.R.Mainkar
Paper charges:-- 0--0--3

Total Rs.0--2--3

Annas two and pies three only.

Copy applied for on 6-2-49
Copy ready on 2-2-50
Copy delivered on 14-4-52
sent by V.P.P. Regd. Post on

Supdt.Decree Dept.
2-2-1950.

Assistant Superintendent

In His Majesty's High Court of Judicature at Bombay.

Order passed by the High Court in the case of

Udapirao Venkatrao Jahagirdar (Ori.Plaintiff)...Applicant.

Versus

1 Province of Bombay.
2 The Dharwar Urban Co-Operative Credit Bank, Ltd.Dharwar.
(Original Defendants).. ... Opponents.

Being Civil Application No.61 of 1949 in Second Appeal No. 1258 of 1948, for Interim Injunction to Opponents.

Mr.T.S.Jahagirdar,Advocate for the Applicant.
Government Pleader for Opponent No.1.
Mr.N.M.Hungund Advocate for Opponent No.2.

Coram:- Shah J.

Rule absolute. The Applicant to furnish security in the amount of interest at the rate of 4% for two years. Costs costs in the appeal.

Sd/- S.H.Belavadi
Deputy Registrar.

30-6-1949.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

SEAL OF THE HIGH COURT AT BOMBAY

True Copy

For Deputy Registrar,

The 2nd day of February 1950.

Rs.as.ps.

(11)

K.408. Old charges.

Copying charges. 0-6-0 Fols. 3.
Comparing charges. 0-1-0
Paper charges. 0-0-3

Total Rs.. 0-7-3

Annas Seven and pies three, only.

P. S. Gupte

Superintendent, D.D.
20-3-1952.

Typed by Mr. D.R.Gokarn
Examined by Mr.
Read by Mr. V. V. Patwardhan

Copy applied for on 6-7-1949
Copy ready on 20-3-1952
Copy delivered on 14-4-52
sent by V.P.P. on Regd. Post

Assistant Shirastedar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Order passed by the High Court in the Case of :

Udapirao Venkatrao Jahagirdar

(Original Plaintiff).....Applicant.

Versus.

1. Province of Bombay.

2. The Dharwar Urban Cooperative Credit Bank, Ltd., Dharwar.

(Original Defendants).....Opponents.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

being Civil Application No. 61 of 1949 for Injunction in Second Appeal No. 1258 of 1948.

Mr. T. S. Jahagirdar, Advocate for the Applicant.

The Govt. Pleader for Opponent No. 1.

Mr. N. M. Hungund, Advocate for the Opponent No. 2.

Coram :- Shah, J.

Rule absolute. The applicant to furnish security in the amount of interest at the rate of 4% for two years.

Costs costs in the appeal.

30th day of June 1949.

208

Bill of costs in the High Court

By the Applicant :	Rs.as.p
Stamps for Application.	5-0-0
Stamps for Vakalatnama (in appeal)	0-0-0
Bhatta for Process.	2-0-0
Advocate's Fee.	45-0-0
Stamps for Affidavit.	0-15-0
Total Rs.	52-15-0

By Opponent No. 1

Stamps for Vakalatnama (G.P.appears)	0-0-0
Advocate's Fee.	45-0-0
Total Rs...	45-0-0

By Opponent No. 2 :

Stamps for Vakalatnama (in appeal)	0-0-0
Advocate's Fee.	45-0-0
Total Rs..	45-0-0

(Seal)

Sd/- S. H. Belavadi

Deputy Registrar

The 30th day of June 1949.

True Copy

For Deputy Registrar

The 20th day of March 1952.

S Byagam 7/45
29-11-52

K. 58.

113

Copying and comparing charges. 4--2-0(Rs.11). Typed by Shri.D.T.Patwardhan 2/4
Paper charges. 0--0-6 Examined by:-
Read by:- V. K Patwardhan

Total Rs....4--2-6

Total Rupees four, annas two and pies six only.

Superintendent, Decree Department.
28-3-1952.

Copy applied for on 9-1-52
Copy ready on 28-3-52
Copy delivered on 8-7-52
sent by V.P.P. Regd. Post on
Assistant Sheristedar

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

In the High Court of Judicature at Bombay.

Friday the 21st day of December 1951.

Appeal No.1258 of 1948 From Appellate Decree.

Udapirao Venkatrao Jahagirdar (Ori.Plaintiff)....Appellant.

Versus

1 The Province of Bombay; 2 The Dharwar Urban Co-operative Credit Bank,Ltd., Dharwar,now under liquidation by its Liquidator at Dharwar.(Original Defendants). ... Respondents.

Claim Rs.5-0-0 for all purposes.

The plaintiff sued for declaration that claim in Award No.198 of 13th March 1927 cannot be recovered by defendants through the Collector and for perpetual injunction restraining defendants from executing the recovery proceedings and for further declaration that the remedies available to the defendant Bank under the award are barred as for costs.

The Original Suit No.166 of 1944 was decided by the Civil Judge (Senior Division) of Bijapur who dismissed it directing the plaintiff to pay costs of defendants Nos.1 and 2 in one set and bear his own.

The Appeal No.87 of 1947 of the District File was decided by the Assistant Judge of Bijapur who confirmed the decree of the Court of first instance and dismissed the appeal with costs.

An appeal has been admitted in the High Court from the decision of the lower Court. Notice was ordered to issue by the Honourable Mr.Justice Gajendragadkar on the 17th day of December 1948.

The grounds of objection to the decision appealed against are:-

1). That the order and decree of the lower Appellate Court are contrary to law and equity.

2). The lower Appellate Court was wrong in holding that Respondent No.2 Bank could proceed under section 59(1)(b) of the Bombay Co-operative Societies Act,1925,when it had elected to proceed under section 59(1)(a) of the Act and recovered part of the amount through Court and darkhast No.172 of 1933 was held to be time-barred.

3). It should have been held that the Respondent Bank,having obtained a judgment on one remedy and having received partial satisfaction in pursuance of that remedy and having got that remedy time-barred lost the right to proceed on the other remedy as firmly established by various English and Indian cases.

4). The lower Appellate Court erred in holding that the award made under section 54 of the Bombay Co-operative Societies Act 1925,did not become infructuous or unenforceable when the Civil Court held that the remedy of the party under section 59(1)(a) of the Act was barred by limitation.

5). The lower Appellate Court has not properly appreciated the law on the points.

6). The lower Appellate Court was wrong in holding that the decision in 49 Bom.L.R.168 must govern the present case.

7). The lower Appellate Court ought to have seen that each case is to be decided on the facts of the particular case and so the facts in the ruling in 49 Bombay Law Reporter 168 are quite different from the facts of the present case.

8). The lower Appellate Court failed to see that the question of limitation had been kept open and had not been finally adjudicated upon in the ruling in 49 Bom.L.R.168 while in the present case there was an express decision of the Court that the Darkhast was time-barred and that decision being not appealed against was final and conclusive between the parties.

9). The lower Appellate Court ought to have seen that no recovery had been made in that case when the proceedings were going on in the Civil Court under section 59(1)(a) of the Bombay

Co-operative Societies Act and since there was no finding on th bar of limitation,it was held that the alternative remedy was open to the Bank. While in the present case there was partial recovery in the Civil Court and further there was a conclusive finding that the darkhast is barred by limitation.

10). The lower Appellate Court ought to have held that the Respondent Bank having taken advantage by partial recovery in the Civil Court under section 59(1)(a) of the Bombay Co-Operative Societies Act,cannot resort to alternative remedy when the first remedy is either exhausted or not available.

11). It should have been also held that when an advantage is taken by recovery in the Civil Court,when the matter is pursued to a conclusive judgment and when the award is not in existence, it is not open to the Bank to resort to the alternative remedy by obtaining a fresh certificate from the Registrar.

12). The lower Appellate Court should have held that the ruling in 49 Bom.L.R.168 is inapplicable to the facts of the present case and the principle laid down in that case supported the case of the plaintiff-appellant.

13). The lower Appellate Court has wrongly held that the observations quoted in its judgment from 49 Bom.L.R.168 are in the nature of obiter dicta.

16). The lower Appellate Court erred in holding that "Judgment and satisfaction" referred to in 49 Bom.L.R.168 meant complete satisfaction,and not partial satisfaction.

17). The lower Appellate Court failed to see that when there is complete satisfaction,then the question of resorting to another remedy does not arise at all.

18). The lower Appellate Court has unauthorisedly and wrongly entered into the propriety or otherwise of the decision of the learned Subordinate Judge in Darkhast No.172 of 1933 holding that darkhast to be time barred.

19). The lower Appellate Court erred in holding that the suit is barred under Sec.51 of the Bombay Co-Operative Societies Act.

20). The lower Appellate Court was wrong in holding that the suit is bad for want of leave of the Registrar under section 51 of the Bombay Co.Operative Societies Act.

HIGH COURT APP. SIDE CERTIFIED COPY BOMBAY

21). It should have been held that the matter involved in this case was not connected with the winding-up or dissolution of a Society under the Bombay Co-operative Societies Act.

22). The lower Appellate Court ought to have seen that the remedy was also barred under section 48, Civil Procedure Code as the period of 12 years has elapsed after the passing of the award.

23). Proper issues are not raised.

24). Proper inferences are not drawn.

25). The law involved in the case is misunderstood and misconstrued

26). The order as to costs is wrong.

Coram:- Vyas, J.

For the reasons stated in the accompanying Judgment, the Court confirms the decree of the lower Appellate Court and dismisses the appeal with costs.

21st December 1951. Sd/- S.H.Belavadi
Deputy Registrar.

Bill of costs in the High Court,

By the Appellant:--	Rs.as.ps.
Stamps for Memorandum of appeal.	6--4-0.
Stamps for copies of decree and Judgment.	1-14-0.
Stamps for Vakalatnamas.	5--0-0;
Bhatta for process.	1--0-0.
Sectioner's Fee.	25-12-0.
Advocate's Fee.	45--0-0.
Printing charges.	11--0-0.
Total Rs.....95-14-0.	

By Respondent No.2:--	Rs.as.ps.
Stamps for vakalatnama.	2--8-0
Advocate's Fee.	45--0-0
Total Rs.....47--8-0	

By Respondent No.1:--	Rs.as.ps.
Stamps for Vakalatnama (G.P.Appeared).	0--0-0.
Advocate's Fee.	45--0-0.
Total Rs.....45--0-0.	

Sd/- S.H.Belavadi
Deputy Registrar,
The 21st day of December 1951

(SEAL)

True Copy

For Deputy Registrar,
The 28th day of March 1952.

Copy applied for on 9-7-52
Copy ready on 10-6-52
Copy delivered on 8-7-52
sent by V.P.P. Regd Post on
Assistant Sharistad

APPEAL No. 1258 OF 1948 FROM APPELLATE DECREE.

Udapirao Venkatrao Jahagirdar (Original Plaintiff) ... ... Appellant;

versus

The Province of Bombay and another (Original Defendants) ... Respondents.

Superintendent,
Decree Department.
10-6-1952.

Second Appeal against the decision of N. S. Metrani, Esquire, Assistant Judge at Bijapur, in Appeal No. 87 of 1947, from the decision of N. V. Ranasubhe, Esquire, Civil Judge (Senior Division), at Bijapur, in Suit No. 166 of 1944.

Messrs. K. Datar and T. S. Jahagirdar, Advocates for the Appellant.

Mr. K. S. Daundkar, Assistant Government Pleader for Respondent No. 1.

Mr. N. M. Hungund, Advocate for Respondent No. 2.

(CORAM—Vyas, J.)

21st December 1951.

Oral Judgment.—This is a second appeal from a decision of the Assistant Judge, Bijapur, in Civil Appeal No. 87 of 1947 which was filed in his Court from a decree in Civil Suit No. 166 of 1944 of the Court of the Civil Judge (Senior Division) at Bijapur. The suit of the plaintiff was dismissed by the trial Court and on an appeal being filed by the plaintiff against that decision, the appeal too was dismissed. Hence this second appeal by the plaintiff.

The suit has been filed by the plaintiff for a declaration that the claim in award No. 198 dated 13th March 1927 is time-barred and cannot be enforced through the Collector as arrears of land revenue under section 59 (*1*) (*b*) of the Bombay Co-operative Societies Act, 1925, and for an injunction to restrain defendant No. 2, the Dharwar Urban Co-operative Credit Bank, Ltd., from continuing the recovery proceedings pending before the Collector under section 59 (*1*) (*b*) of the Bombay Co-operative Societies Act.

Shortly stated, the facts of the case which have given rise to this litigation are that the plaintiff contracted a debt of Rs. 2,000 from the defendant 2 bank, of which he was a member, for and on behalf of the Karnatak High School, Dharwar. The debt was contracted on 12th January 1923. The question of the recovery of the debt was referred to arbitration. That reference was made on 25th February 1926. On 13th March 1927 an award was made by the arbitrators under section 54 of the Bombay Co-operative Societies Act. It was Award No. 198. It was for Rs. 2,670-5-0. On 7th January 1928, a certificate was obtained by defendant No. 2 bank from the Registrar, Co-operative Societies, and thereupon the award became executable, as if it were a decree of a Civil Court, under section 59 (*1*) (*a*) of the Bombay Co-operative Societies Act. Thereafter Darkhast No. 728 of 1928 was filed in the Court of the First Class Subordinate Judge, Dharwar. In that Darkhast, an open plot of land belonging to the plaintiff in Dharwar was put to sale for the recovery of the amount due to the bank under the award. In that sale Rs. 450 were recovered and the award was partly satisfied. On 30th June 1931 the abovementioned Darkhast No. 728 of 1928 was disposed of. On 1st June 1932 a Civil Application No. 163 of 1932 was made to the First Class Subordinate Judge, Dharwar, under section 39 read with Order XXI rule 6, of the Code of Civil Procedure for transfer of the award for execution to the Second Class Subordinate Judge's Court at Bagalkot, District Bijapur, as the landed

Rs.As.Ps.(Fls.22)
Copying and comparing charges. 8 -4 -0
Total Rs. 8 -4 -0
K.58.

property of the plaintiff was situated in Bagalkot. On 13th July 1932 a certificate of the transfer of the award was issued by the Dharwar Court. On 4th March 1933 Darkhast No. 172 of 1933 was filed in the Court of the Second Class Subordinate Judge, Bagalkot, by the Bank and six lands belonging to the plaintiff were put to sale and were sold. However, the said sale was set aside in Appeal No. 44 of 1936 on 13th August 1936. It was set aside on the ground of the inadequacy of price. The Darkhast No. 172 of 1933 was sent back again to the Bagalkot Court. In the meantime, the plaintiff appeared in the Darkhast proceedings and contended that the Darkhast was time-barred. In the meantime, on 27th January 1940 defendant No. 2 Bank went into liquidation. A Board of Liquidators was appointed by the Registrar, Co-operative Societies, under section 47 of the Bombay Co-operative Societies Act. The said Board was superseded and a liquidator was appointed instead. On 30th July 1940 Darkhast No. 172 of 1933 filed by defendant No. 2 Bank was dismissed as time-barred under article 181 of the Limitation Act. After the above mentioned dismissal of the Darkhast, the liquidator made an application to the Assistant Registrar, Co-operative Societies, for a certificate under section 59 (*1*) (*b*) of the Bombay Co-operative Societies Act. That application was opposed by the plaintiff. On 5th November 1940 the plaintiff applied to the Assistant Registrar, Co-operative Societies Act, saying that a certificate under section 59 (*1*) (*b*) of the Act should not be issued to the liquidator. That application was rejected by the Assistant Registrar. There was an appeal to the Registrar against that order. The appeal was dismissed by the Registrar. There was a revision application to Government against that order of the Registrar and the revision application also was dismissed. The result was that on 18th December 1940 an *ex parte* order was made by the Assistant Registrar giving a certificate under section 59 (*1*) (*b*) of the Act to the liquidator. On 21st December 1940, the liquidator applied to the Collector for proceeding under section 59 (*1*) (*b*) of the Act for recovering the unrecovered amount due under the award as arrears of land revenue. On 31st December 1940 an order was made by the Collector to the Recovery Officer, Bagalkot, directing him to recover the amount due under the award. On 26th March 1941 the Recovery Officer issued a demand notice against the plaintiff asking him to pay up the amount due from him. That brought about the present suit by the plaintiff which was filed on 27th March 1944 for the declaration and injunction as set out at the commencement of this judgment.

Now, the material dates to which Mr. Jahagirdar for the appellant has drawn the attention of the Court are four. On 13th March 1927 the award was made. On 7th September 1928 the Registrar, Co-operative Societies, issued a certificate, whereupon the award become executable, as if it were a decree of the Civil Court, under section 59 (*1*) (*a*) of the Bombay Co-operative Societies Act. On 30th July 1940 Darkhast No. 172 of 1933 which was filed in the Second Class Subordinate Judge's Court at Bagalkot by the Bank was dismissed as time-barred. On 18th December 1940 the Assistant Registrar, Co-operative Societies, issued a certificate to the Liquidator, whereupon the proceedings were sent to the Collector for recovering the amount under section 59 (*1*) (*b*) of the Act, as though it was arrears of land revenue. Now, the trial Court came to the conclusion that notwithstanding the fact that the Bank had at first chosen the first remedy referred to in section 59 (*1*) (*a*) of the Act and had sought to execute the award, as if it were a decree of a Civil Court, and although eventually the Darkhast in the Bagalkot Court had stood dismissed as time-barred, it was perfectly open to the Bank subsequently to adopt the second remedy contemplated in section 59 (*1*) (*b*) of the Act and seek the recovery of the amount due under the award, as if it was arrears of land revenue, through the Collector under section 59 (*1*) (*b*). On that point, thus, the trial Court held in favour of defendant No. 2 Bank and against the plaintiff. In respect of the other point taken up on behalf of the Bank, namely, that the suit of the plaintiff was barred under section 51 of the Act as the leave of the Registrar had not been obtained previous to the filing of it, the learned trial Judge held in favour of the plaintiff and decided that the suit was not barred under section 51 of the Act. In appeal, however, the learned Judge of the lower appellate Court decided both the points against the plaintiff. He held that the defendant Bank could proceed against the plaintiff under section 59 (*1*) (*b*) of the Act after having failed in the first remedy sought by it under section 59 (*1*) (*a*) of the Act and further that the suit of the plaintiff was barred under section 51 of the Act.

Now, in respect of the question whether defendant No. 2 Bank, having once failed in the first remedy adopted by it under section 59 (*1*) (*a*) of the Bombay Co-operative Societies Act to recover the debt due to it from the plaintiff, could prosecute the second remedy contemplated by section 59 (*1*) (*b*) of the Act, namely, the remedy of recovering the dues as arrears of land revenue through the Collector in a revenue proceeding, the matter has been clearly decided by a decision of this Court in *Muppanna* v. *Gajanan*

Urban Co-operative Bank (1947) 49 Bom. L. R. 168. The authority of *Hanmant Bhimrao* v. *Gururao Swamirao* (1942) 44 Bom. L.R. 880 was considered in this case and it was observed :—

> "'in general it is only on obtaining judgment on one remedy that the plaintiff loses the right to proceed on the other remedy' must be understood to mean that the proceedings up to judgment on the first remedy also imply that the plaintiff must have received satisfaction in pursuance of that remedy. If therefore the holder of an award obtains satisfaction after resorting to one remedy provided by law under section 59 (*1*) (*a*) of the Bombay Co-operative Societies Act, then he would be precluded from resorting to the second remedy to which he could have had recourse under section 59 (*1*) (*b*) of the Bombay Co-operative Societies Act. In the present case it is conceded that in the darkhast which the Bank had filed in the Court of the Subordinate Judge at Haveri nothing was recovered, and it cannot therefore be said that the Bank had resorted to a remedy up to judgment and satisfaction. In that view, in our opinion, there was nothing to prevent the bank from obtaining a certificate from the Registrar and to proceed to execute the award by an application to the Collector, for recovering the amounts due to it, as if they were arrears of land revenue.".

The point to be noted, therefore, is that in *Muppanna* v. *Gajanan Urban Co-operative Bank the* second remedy contemplated by section 59 (*1*) (*b*) of the Bombay Co-operative Societies Act was held not precluded by reason of the fact that in the first remedy which was adopted under section 59 (*1*) (*a*) the remedy was not pursued up to judgment and satisfaction. The matter before this Court, however, is entirely different. It is to be remembered that in the first Darkhast which was filed in the Dharwar Court in which an open plot belonging to the plaintiff was put to sale a sum of Rs. 450 was recovered towards the satisfaction of the amount due under the award. Therefore, this is clearly a case in which the remedy under section 59 (*1*) (*a*) of the Act was pursued up to judgment and satisfaction. No doubt, it was not a full satisfaction, in view of the fact that the Darkhast which was filed in the Bagalkot Court by the Bank against the plaintiff was dismissed as being time-barred. Nevertheless, a sum of Rs. 450 had been recovered by the Bank in the first Darkhast which was filed by it in the Dharwar Court and that satisfaction must be looked upon as a material satisfaction, thought not a complete satisfaction. That being so, in the words of Mr. Justice Rajadhyaksha in *Muppanna Malkappa Humbi* v. *Shree Gajanan Urban Co-operative Bank Limited,* the defendant No. 2 Bank would be precluded from resorting to the remedy under section 59 (*1*) (*b*) of the Act.

The first point must, therefore, be answered in favour of the plaintiff. Nevertheless, the plaintiff must lose this litigation, as I am clearly of the opinion that his suit is barred under section 51 of the Bombay Co-operative Societies Act. If we turn to section 51 of the Act, we find that it lays down:

> "Save in so far as is expressly provided in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a Society under this Act and when a winding up order has been made no suit or other legal proceedings shall lie or be proceeded with against the Society except by leave of the Registrar and subject to such terms as he may impose."

Now, there is no dispute in this case that the leave of the Registrar, Co-operative Societies, has not been obtained prior to the filing of the suit. Mr. Jahagirdar for the appellant-plaintiff contends, however, that both the clauses mentioned in section 51, namely, "no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a Society under this Act" and "when a winding up order has been made no suit or other legal proceedings shall lie or be proceeded with against the Society except by leave of the Registrar" must be read together and it must be held that the prior leave of the Registrar is required only in case of a suit or proceeding in which the matter is connected with the winding up or dissolution of a Society. It is then submitted by Mr. Jahagirdar that this suit is not in relation to a matter connected with the winding up or dissolution of a Society and therefore the leave of the Registrar was not necessary prior to the filing of the suit. In my view, it is impossible to hold that the above mentioned two clauses of section 51 must be read as connected one with the other. I am of opinion that the two clauses are entirely distinct and independent of each other. Under the first clause it is laid down that no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a Society under the Act and under the second clause it is laid that when a winding up order has been made no suit or other legal proceedings of any description shall lie or be proceeded with against the Society except by leave of the Registrar. In my view, if the matter is connected with the winding up or dissolution

of a Society, no question arises of any leave to be taken from the Registrar. The matter would stand straightaway outside the cognizance of a Civil Court. Whether leave has been taken or not taken, the cognizance of such matter cannot be taken by any Civil Court. If we accept the contention of Mr. Jahagirdar that the two clauses, which are to be found in section 51, are connected together, the second clause becomes meaningless, since in that case leave or no leave, cognizance of the matter cannot be taken by a Civil Court. Clearly, therefore, the clauses are independent, and since prior to the filing of this suit the leave of the Registrar was not obtained, the suit must fail as barred under section 51 of the Bombay Co-operative Societies Act.

Althougn, therefore, the plaintiff wins in his first contention, namely, that defendant No. 2 Bank is precluded from pursuing the second remedy as laid down in section 59 (1) (b) of the Bombay Co-operative Societies Act, he must fail in this litigation as the suit was filed without obtaining the leave of the Registrar, Co-operative Societies. The appeal accordingly stands dismissed with costs.

By order of the Court,

Exd. by :—G. M. M.

(Signed) V. R. GADKARI,
for Deputy Registrar.

.....

True Copy.

for Deputy Registrar.

The 10th day of June 1952.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

121
24

Suits :
Bijapur.
For a declaration that the award No. 198 dated 13th March 1927, is no longer executable and for an injunctic restraining the Defendants from continuing the recovery proceeding under section 59 (1) (b) of the Bombay Co-operative Societies Act, 1925.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 5177/E
Bombay Castle, 16th September 1952.

Read Government Resolution, Legal Department No. 6281, dated the 6th June 1949.

Letter from the Government Pleader, High Court, Bombay

In the Court of the First Class Sub-Judge, Bijapur. Civil Suit No. 166 of 1944. Udapirao Venkatrao Jehagirdar ... Plaintiff; Vs. (1) The Provincial Government of Bombay; (2) The Dharwar Urban Co-operative Credit Bank, Ltd. (under liquidation by its Liquidator) Claim Rs.5/- ... Defendants.	No. 927, dated the 4th February 1952, stating that the second Appeal No. 1258/48 in the suit noted in the margin was

decided by the High Court of Judicature at Bombay, on the 21st December 1951, when the following order was passed :-

" The Court confirms the decree of the lower Appellate Court and dismisses the appeal with costs. "

Letter from the Government Pleader, High Court, Bombay, No. 5276, dated the 19th July 1952, forwarding certified copies of the judgment and decree.

RESOLUTION : The result of the Second Appeal No. 1258/48 is recorded.

By order of the Governor of Bombay,

nbbb. for sign
16/9/52
D.S(Civil)

Original R. T. Katarki
R. T. Katarki,
Deputy Secretary to Government.

To

Issued 16/9
s.15/9.

The Development Department,
The Collector of Bijapur,
The Registrar of Cooperative Societies and Rural Development, Bombay State, Poona,
The Government Pleader, High Court, Bombay,
The District Government Pleader, Bijapur.

Re: ... S. Bijapur ... 2/45

NB
17.9.52

S. Bijapur 2/45

To be given. Opp. No. 1

123

ಮುಂಬಯಿ ನ್ಯಾಯಾಧಿಕಾರಿ ಕೋರ್ಟ್‌ಕೋಟಗಿ
ತಿಲೆಲೆಟ್ ನ್ಯಾಯಾಧೀಶ ಇಳಿಸಿ

ನಮ್ಮ ಅನ್ಯಾಯ ನೇ ಇಕ್ಷಿಯ ಲೆಟರ್ಸ್ ಪೇಟೆಂಟ ಪ್ರಮಾಣ ನಂ. ೧೯
ಇದಕ್ಕೆಳ್ಳಿನ ಹಸ್ತ ಅನ್ಯಾಯ ನೇ ಇಕ್ಷಿಯ ದಿವಾಣಿ ಅರ್ಜಿ ನಂಬರು
೧೪೫೫.

ಎರಡನೇ ಅರ್ಜಿದಾರ ನಂಬರ. ಇಳಿಸಿಕೊಳ್ಳಿ ಅನ್ಯಾಯ ನೇ
ಇಕ್ಷಿಯ ಪ್ರತಿವಾದಿ.

ಮೂಲಮೂರ ಅಂಜುಮನ್ ಕೋಟಿನ ಹಸ್ತ ೧೯೫೫ ನೇ ಇಕ್ಷಿಯ
ದಿವಾಣಿ ಅರ್ಜಿದಾರ ನಂಬರು ಲಾಲ್
ಬಿಜಾಪುರ ಕೆಪಿಟಿಲ್ ಜಜ್ಜು ಸೇಷನ್ಸ್ ಡಿವಿಜನ್ ಇವರಕೋರ್ಟ
ನ ಹಸ್ತ ೧೯೫೫ ನೇ ಇಕ್ಷಿಯ ದಿವಾಣಿ ದಾವೆ ನಂಬರು ೧೯೫೫

ಉಡಪಿರಾವ ಮೆಂಟಪ್ಪ ಜಹಾಗೀರದಾರ } ಅರ್ಜಿದಾರ. ಇವನ
ವಕೀಲರು
ಮಿ. ಟಿ.ಎನ್. ಜಹಾ
ಗೀರದಾರ.

ವಿರುದ್ಧ.

(೧) ಮುಂಬಯಿ ಪ್ರೆಂಚಿಕ ಸರಕಾರ.
(೨) ದಿ ಧಾರವಾಡ ಅರ್ಬನ್ ಕೋ-ಆಪರೇಟಿವ್ ಕ್ರೆಡಿಟ್ ಬ್ಯಾಂಕ ಲಿಮಿಟೆಡ್ ಧಾರವಾಡ } ಎದುರಗಾರರು.

(೧) ಮುಂಬಯಿ ಪ್ರೆಂಚಿಕ ಸರಕಾರ ಇವರವತಿಯಿಂದ ಬಾಬಾ
ಪೂರ ಕೆಲಶೆಟ್ಟರ ಇವರಮೇಲೆ ಜಾರಿಮಾಡಬೇಕು.

ಮೇಲಿನ ಮೂರನೆಯ ಅರ್ಜಿದಾರರು ಈ. ಮುಂಬಯಿ
ನ್ಯಾಯಾಧಿಕಾರಿ ಕೋರ್ಟ್‌ಕೋಟಗಿ ಇಳಿಸಿ ಮಂದು ಅರ್ಜಿಯನ್ನು
ದಾಖಲ ಮಾಡಿ ಕುಹರೀ ಲೆಟರ್ಸ್ ಪೇಟೆಂಟ ಅರ್ಜಿಲ ನಿಯಮ
ಅನುಸಾರ ಈಗ ಹೊರಡುಂದ ಇಳಿಸಿಯ ಪ್ರತಿವಾದಿಯನ್ನು ಸಜಿ
ಸಿದಂತೆ ನಿಮ್ಮನ್ನು ಪ್ರತಿ ಬಂಧಿಸ ಬೇಕೆಂದು ಬೇಡಿಕೊಂಡಿದ್ದಾನೆ.

ಮತ್ತೂ ಈ ಅರ್ಜಿದಾರನ ವತಿಯ ವಕೀಲರ ಕೋರಿಕೆ
ಯನ್ನು ಕೇಳಿಕೊಂಡ ಬಳಿಕ ಕೋರ್ಟಿನವರು ಕೆಳಗಿನಂತೆ ಆಜ್ಞೆ
ಮಾಡಿರುತ್ತಾರೆ.

೧೯ ರೂಲು ಮತ್ತು ಆರ್ಡ್ಸ್ ಆಫ್ ಮುನಾಯಿಟಿಯ

ಆದುದರಿಂದ ಈ ಮೂಲಕ ಹೊರಡುಂ ಮಾಡುವದೇನಂದರೆ
ಮೇಲಿನಂತೆ ನಿಮ್ಮನ್ನು, ನಿಮ್ಮ ಸಹೋದರರನ್ನು ಹಾಗು ನಿಮ್ಮ
ಪ್ರತಿನಿಧಿಗಳನ್ನು ಮೇಲೆ ಪ್ರತಿ ಬಂಧನ ಬಾರದೆಂಬ ಬಗ್ಗೆ ಈ ನೋ
ಟೀಸು ಜಾರಿಗೊಡಿದ ದಿವಾಣಿಯಿಂದ ಒಂದು ತಿಂಗಳಿಗೆ ಕೆಳಗಾಗಿ
ನೀವು ಕಾರಣವನ್ನು ತೋರಿಸಿದಿದ್ದಲ್ಲಿ ಮೇಲ್ಕಂಡ ನಿಮ್ಮ ಸಹೋದರರ

ಹಾಗೂ ನಿಮ್ಮ ವಿಶ್ವಂಭರರು ನಿಧನರಾದ ಲಾಟನಾ ಪ್ರಾಪರ್ಟಿಯ
ಮೊಕೀಲನ ಕೆಲಸಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ವಿಚಾರಣೆಯು ಹೈಕೋರ್ಟಿನಿಂದ
ತೆಗೆಯಬೇಕೆಂದು ಪ್ರಾರ್ಥನೆಯಂದ ಇಲ್ಲಿಯ ಭೂಮಾಲೀದಾರ ಸಭೆಯ
ಮುಂದೆ ಬರಲು ಇರುವ ಮನೂಲ ಪ್ರತಿವಾದಿಯನ್ನು ಹಿನವಹಿಸುವಂತೆ
ಪ್ರತಿವಂಧಿಸಲ್ಪಟ್ಟಿರುತ್ತೀರಿ.

ಇದಕ್ಕೆ ಕಾರಣ ಎಮಗೆ ಪ್ರಿ. ಬರಗಲಾ ಎಂಬ್ಯಾಯಂಕ್
ನವರೀ ಮುಂಬಯಿಯಲ್ಲಿರುವ ಮುಖ್ಯ ವ್ಯವಸ್ಥಾಧಿಕಾರಿಗಳು.
ಕೆಳಹೆಸರಿತ್ತ ಕಾರಣಗಳಿಗಾಗಿ, ನಿಮ್ಮೆದುರಿಗೆ ಒಂದು ಸಿವಿಲ್ ದಾವೆ
ಹೂಡಲು ಪ್ರಾರ್ಥಿಸಿರುವುದೇ ಇಲ್ಲಿಗೆ

ಕೋರ್ಟಿನ ಆಜ್ಞೆಯಂತೆ.

ಬಿಡಿ ಆಕಿ ಗದಗರವರಿ.
ಸಹಿ/-
ರಿಜಿಸ್ಟ್ರಾರಂಡತ ಕಳಿಸಿಕೊಟ್ಟಿರುವೆ

ಮುಂಬಯಿ ಹೈಕೋರ್ಟಿನ ಮೊಹರು

ಕಾರಣಗಳು ಏನೇ ಇರಲಿ ಎಂದು ಇಲ್ಲಿಗೆ ಇದೆ

ಸಹಿ/- V. R. Gadakari
6/10.

Seal of the High Court at Bombay.

ರಿಜಿಸ್ಟ್ರಾರಂಡತ ಕಳಿಸಿಕೊಟ್ಟಿರುವೆ

ಈ ಕಾರಣಗಳು ಕಾರಣಗಳು. ರಿಜಿಸ್ಟ್ರಾರರು ಗದಗ

125 3 29

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

APPELLATE SIDE, BOMBAY.

APPEAL NO. 19 OF 1952 Under Letters Patent

...

Udgirao Venkatrao Jahagirdar
of Bijapur. ... ... Appellant.
(Ori. Plff.)

V/s.

(1) The State of Bombay, and another. .. Respondents.
(Ori. Deft.No.1)

Claim Rs. 5/-

No. 1034 of 1952.

From

The Deputy Registrar,
High Court, Appellate Side, Bombay.

To

of
* The Secretary to Govt. Bombay,
Legal Department, Bombay.

Bombay, 13th Oct. 1952.

Sir,

The Appellant, abovenamed having presented an appeal from the decision of this High Court of Judicature in S.A. No. 1258 of 1948, and the same having been registered in this Court, and this Court having on 20th August 1952, ordered notice to issue, I have the honour to inform you that the hearing of the said appeal will take place on the 10th day of December 1952, or on any subsequent day which to this Court may seem convenient; and that if no appearance is made on your behalf either in person or by apleader of this Court as agent duly authorised and instructed, it will be heard and determined in your absence,

Yours faithfully.

Sd/-

for Deputy Registrar.

Received the copy of the notice.

Sd/- V.T.Gambhirwala.
for* Govt. Pleader, High Ct.,
Bombay.
to be served on Govt. Pleader,.

MVG

G.C.P.—(J) J 202—500—8-47
G.R., J.D., No. 4398 dated 8-7-46.

[Spl.—H.C. A.S. Civil] 20 6

127

IN THE HIGH COURT OF JUDICATURE,
APPELLATE SIDE, BOMBAY

APPEAL No. 19 OF 1952 ~~FROM~~ Under Letters Patent ~~DECREE~~

Udpirao Venkatrao Jahagirdar of Bijapur } Appellant (orig. plff)

versus

The State of Bombay and another } Respondents (orig. Deft Nos)

Claim—Rupees 5/-

No. 1034 OF 1952

From—

THE DEPUTY REGISTRAR,
High Court, Appellate Side, Bombay;

To The Secretary to Govt of Bombay,
Legal Deptt., Bombay.

Bombay, 13th October 1952.

Sir,

The Appellant abovenamed having presented an appeal from the decision of the ~~High Court Judge~~ of Judicature in S.A. No. 1258 of 1948, and the same having been registered in this Court, and this Court having on 20th August 1952, ordered notice to issue, I have the honour to inform you that the hearing of the said appeal will take place on the 10th day of December 1952, or on any subsequent day which to this Court may seem convenient; and that if no appearance is made on your behalf either in person or by ~~a pleader~~ an advocate of this Court or agent duly authorized and instructed, it will be heard and determined in your absence.

~~I have the honour to be.~~

Sir,

~~Your most obedient servant,~~

for Deputy Registrar.

* To be served on K.V.

b- Rambhau
25/10.

10/10/52

R.9.No. 3287 Dy
18-11-54. 129
Legal Deptt.

Sol. M.L.

Under section 51 of the Bom. Co-operative Societies Act, no suit can be brought against a society in liquidation unless the Registrar's permission for the purpose ~~m~~ is obtained before instituting the suit. In this case it does not appear that before bringing suit No. 166 of 1944 the plff. applied for or obtained the Registrar's permission for filing the suit. Second Appeal No. 1258 of 1948 was dismissed by the High Court on the ground that before filing the suit the plff. did not obtain the Registrar's permission for the purpose. Even if the Registrar had granted permission during the pendency of Letters Patent Appeal No. 19 of 1952 preferred by the plff against the decree in the Second Appeal, the Letters Patent Appeal would not have succeded, for the Registrar's permission has to be obtained before the filing of the suit. The Govt. Pleader, High Court has now informed this Deptt. that the Letters Patent Appeal also has been dismissed by the High Court.

2. If the Plff. contemplates to bring a fresh suit against the society in liquidation, and applies to the Registrar for his permission for the purpose. There would be no objection to grant him the permission.

Id/- M.M.N.
13-5-55-

W.O.R. & D.D. No. 1010/E dt. 14-5-55

Subtotal after visit →

Total visit S. Bijapur 2/45 →

6/5

9.5 PM/16/4

S. Bijapur 2/45

17/5/55

Rs.As.Ps.Fls. 12

Copying & comparing charges. 4-8-0

paper charges. 0-0-6

Totel 4-8-6

Typed by G.S.Desai.
26 -7-1955
Examined by S.D.Parchure
Read by D.T.Patwardhan

Rupees four annas eight and pies six only.

S.Malherkar
Superintendent D.D.
26-7-1955

Copy applied for on 28/4/55
Copy ready on 26/7/55
Copy delivered on 30-8-55
Sent by V.P.P. on
Reg.
Assistant Superintendent 30/8

Appeal No. 19 of 1953 Under the Letters Patent.

.....

Udpirao Venkatrao Jahagirdar ... ... Appellant.
(Original Plaintiff).

versus

1. The State of Bombay and another ... ... Respondents.
(Original defendants).

HIGH COURT APPEAL SIDE CERTIFIED COPY BOMBAY

Appeal under the Letters Patent against the decision of this Court (Vyas, J.) in S.A. No.1258 of 1948 against the decision of N.S. Metrani, Esqr. Assistant Judge at Bijapur in Appeal No. 87 of 1947 from the decision of N.V.Ransubhe Esqr., Civil Judge, Senior Division, at Bijapur in Civil Suit No. 166 of 1944.

...

Mr. T.S. Jahagirdar, Advocate for the Appellant.

Mr. V.S. Desai, Assistant Government Pleader for Respondent No. 1.

Mr. N.M. Hungund, Advocate for Respondent No. 2.

Coram :- Chainani and Gokhale, JJ.

15th April 1955.

Oral Judgment :-(Per Chainani,J.)

This is an appeal under the Letters Patent against the decision of Mr. Justice Vyas, by which he confirmed the decree passed by the Assistant Judge. Bijapur, dismissing the plaintiff's suit with costs. The plaintiff was a member of the

Dharwar Urban Co-operative Credit Bank Ltd., Dharwar. In 1923, he had borrowed Rs. 2000/ from the Bank. As the plaintiff did not repay this amount, the question was referred to arbitration in 1926. The arbitrator made his award on 13th March 1927, under S. 54 of the Bombay Co-operative Societies Act, 1925. On 7th September 1928, a certificate of the Registrar was obtained under S. 59(1)(a) of the Act. The award then became executable as a decree. A darkhast was accordingly filed in the court of the First Class Subordinate Judge at Dharwar. Rs. 450 were realised under that darkhast. Thereafter, other darkhasts were filed, but the Bank was not able to realise anything. On 27th January 1940, the Bank went into liquidation. A Liquidator was appointed, and on his application the Registrar issued a certificate under S. 59(b) of the Act, so as to enable the award being executed according to the law for the recovery of arrears of land revenue,. The Liquidator then applied to the Collector for recovering the amount due from the plaintiff, as an arrear of land revenue. A notice of demand was issued to the plaintiff on 20th March 1941. Three years later, the plaintiff filed the present suit for a declaration that the award of 13th March 1927 could not be executed under S. 59(1)(b) of the Bombay Co- operative Societies Act, and for an injunction restraining the State of Bombay and the Bank represented by the Liquidator from executing the award and from continuing recovery proceedings.

The defendants contended that the plaintiff's suit was not competent, as he had not obtained the sanction of the Registrar under S. 51 of the Co- operative Societies Act. They also disputed the plaintiff's contention that the award could not be executed under S. 59(1)(b) of the Act.

The plaintiff's suit was dismissed by the trial Court. The order of dismissal was confirmed in appeal by the Assistant Judge and by Mr. Justice Vyas in Second Appeal. Mr. Justice Vyas accepted the plaintiff's contention that the award could not be executed under S. 59(1)(b) of the Act, as the Bank had -

pursued the alternative remedy under s. 59(1)(a) and as the last darkhast for recovering the remaining amount due from the plaintiff had been dismissed as being time barred. Mr. Justice Vyas, however, came to the conclusion that the suit was barred by S. 51 of the Act. He, therefore, confirmed the decree passed by the Assistant Judge dismissing the plaintiff's suit. Against this order the present appeal has been filed under the Letters Patent.

S. 51 of the Bombay Co-operative Societies Act, 1925, provides that " no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act and when a winding up order has been made no suit or other legal proceeding shall lie or be proceed with against the society except by leave of the Registrar and subject to such terms as he may impose." In this case, the winding up order had been made, but the leave of the Registrar for filing the suit had admittedly not been obtained. The condition requisite for the institution of the suit not having been fulfilled, the suit does not appear to be competent.

Mr. Jahagirdar, who appears for the plaintiff, has invited our attention to Anjuman-i-Dada v. Mehr Bin, A.I.R. 1937 Lah, 931. Abdul Ghani v. Anjuman-i-Imdad, A.I.R. 1942 Lah. 237 and other cases decided under s.42(6) of the Co-operative Societies Act, 1912, which was in the following terms : "Save in so far as is hereinbefore expressly provided, no Civil Court shall have any jurisdiction in respect of any matter connected with the dissolution of a registered society under this Act." In these cases it has been held that if the order of the Liquidator was in excess of his powers or was without jurisdiction, sub- sec (6) of sec. 42 did not bar a suit challenging the validity of such an order. These decisions will not, however, assist the plaintiff in this case. The wording of S. 51 of the present Act is very much wider. It states that after a winding up order has been made, no suit whatever shall be proceed with against a society except

leave of the Registrar. Even if, therefore, the Liquidator cannot now lawfully recover the amount through the Collector, as an arrear of land revenue, no suit can lie against him, unless the leave of the Registrar for filing the suit has first been obtained. We, therefore, agree with the view taken by Mr. Justice Vyas that the present suit is barred under Sec. 51 of the Bombay Co- operative Societies Act.

S. 59(1)(b) of the Act was amended in 1950, and the amendment provides that an application for recovering the amount due to the society, as an arrear of land revenue, must be made within twelve years from the date fixed in the arbitrator's order and if no such date is fixed, from the date of the order. In this case, the application to the Collector was made after more than 12 years from the date of the award. Mr. Jahagirder has, therefore, urged that the application was time barred. There is no substance in this contention. The application was made to the Collector in 1940, The amendment in S. 69(1)(b) was made in 1950. This amendment could not, therefore, apply to the application which had been made 10 years earlier.

Mr Jahagirder has also urged that even if it is held that in view of S. 51 of the Act he cannot obtain any relief against the Society, he should be granted an injunction against the other defendant, the Province of Bombay, restraining it from executing the award in the manner laid down in S. 59(1)(b). This point was not raised before Mr. Justice Vyas. Moreover, in this case, the Society is a necessary party to the suit.

The appeal must consequently fail and ~~fail~~ is dismissed with costs.

By order of the court,
Sd. V.R. Gadkari.
Deputy Registrar.

True Copy

for Deputy Registrar. 26/7

The 26th day of July 1955

No.1241.

Rs. as. ps.
Typing and comparing charges 2 - 4 - 0 (Fls.6) Typed by Mr. R.I.Africawala
paper charges 0 - 0 - 3 Examined by Mr.
Total Rs. 2 - 4 - 3 Read by Mr.

Rupees two annas four and pies three only.

Superintendent, D.D.,
27-7-1955.

Copy applied for on 28/4/55
Copy ready 22/5/55
Copy delivered on 30/8/55
Stamp & Reg. Fee
Assistant Superintendent. 30/8

In the High Court of Judicature at Bombay

Friday the 15th day of April 1955.

Appeal No. 19 of 1952 under Letters Patent.

(District : Bijapur)

Udpirao Venkatrao Jahagirdar.

(Original Plaintiff). ... Appellant.

Vs.

1. The State of Bombay.
2. The Dharwar Urban Co-operative Bank Ltd., Dharwar, now under liquidation by its liquidator at Dharwar.

(Original Defendants). Respondents.

Claim:- Rs. 5 for all purposes.

The Plaintiff sued for a declaration that the claim in Award No.198 of 13th March 1927 cannot be recovered by Defendants through the Collector and for perpetual injunctio restraining Defendants from executing the recovery proceedi gs and for futther declaration that the remedies available to the Defendants Bank under the award are barred and to recover costs of the suit.

The Original Suit No.166 of 1944 was decided by the Civil Judge (Senior Division) of Bijapur who dismissed it directing the Plaintiff to pay costs of Defendants Nos. 1 and 2 in one set and bear his own.

The Appeal No.87 of 1947 of the District File was decided by the Assistant Judge of Bijapur who confirmed the order of the Court of first instance and dismissed the appeal with costs.

Second Appeal No.1258 of 1948 was dismissed by the Honourable Mr. Justice Vyas on the 21st day of December 1951.

An appeal under the Letters Patent has been admitted in the High Court from the above decision. The necessary certificate having been granted on the 20th day of August 1952 in Civil Application No.716 of 1952.

The grounds of objection to the decision appealed against are:-

1. This honourable Court erred in dismissing the appeal with costs.

Coram:- Chainani and Gokhale, JJ.

For the reasons stated in the accompanying Judgment, the Court confirms the decree passed by this Court in S.A.No.1258/48 and dismisses the appeal with costs.

15-4-1955. Sd./- V. R. Gadkari.

Deputy Registrar.

Bill of Costs in the High Court,

By the Appellant.	Rs. as. ps.
Stamps for Memo. of Appeal.	6 - 4 - 0
Stamps for Vakalatnama. (In Second Appeal)	0 - 0 - 0
Bhatta for Process.	1 - 4 - 0
Advocate's Fee.	45 - 0 - 0
Sur-charge.	11 - 4 - 0
Printing charges.	15 - 0 - 0
Total Rs.	78 -12 - 0

By the Respondent No.1.	Rs. as. ps.
Stamps for Vakalatnama. (G.P.appeared)	0 - 0 - 0
Advocate's Fee.	45 - 0 - 0
Sur-charge.	11 - 4 - 0
Total Rs.	56 - 4 - 0

By the Respondent No.2.	Rs. as. ps.
Stamps for Vakalatnama.	2 - 8 - 0
Advocate's Fee.	45 - 0- 0
Sur-charge.	11 - 4 - 0
Total Rs.	58 -12 - 0

Sd./- V. R. Gadkari.
Deputy Registrar.
The 15th day of April 1955.

True copy,

For Deputy Registrar. 22/7/55

The 21st day of July 1955.